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Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16 .... as of January 1
Title 17 through Title 27 .... as of April 1
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The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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JOHN E. BYRNE,
Director,
Office of the Federal Register.

January 1, 1986

THIS TITLE

Title 5—Administrative Personnel is composed of two volumes. The parts in these volumes are arranged in the following order: Parts 1 to 1199, and Part 1200 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1986.

For this volume, Denise L. Landon was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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Title 5—Administrative Personnel

(This book contains Part 1200 to End)

EDITORIAL NOTE: Title 5 of the United States Code was revised and enacted into positive law by Pub. L. 89-554, Sept. 6, 1966. New citations for obsolete references to sections of 5 U.S.C. appearing in this volume may be found in a redesignation table under Title 5, Government Organization and Employees, United States Code.

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Subpart A—General

§ 1200.1 The Board.

The Merit Systems Protection Board ("The Board") is composed of three Members who are appointed by the President with the advice and consent of the Senate, and whose terms are for a period of seven years.

(5 U.S.C. 1101 et seq.)

[44 FR 38349, June 29, 1979]

§ 1200.2 The Chair, Vice Chair.

One of the Members of the Board shall be appointed by the President, with the advice and consent of the Senate, to serve as the Chair and chief executive and administrative officer of the Board. From time to time, the President shall also designate one of the Members of the Board to serve as Vice Chair. In the absence or disability of the Chair, or when the Office of the Chair is vacant, the Vice Chair shall perform the functions vested in the Chair. During the absence or disability of both the Chair and Vice Chair, or when their offices are vacant, the remaining Board Member shall perform the functions vested in the Chair.

(5 U.S.C. 1101 et seq.)

[44 FR 38349, June 29, 1979]

Subpart B—Offices of the Board

§ 1200.10 Principal organizational units of the Board.

(a) The Board is assisted in the performance of its statutory duties by its staff which is divided into the following principal organizational units:

(1) Office of the Managing Director.

(2) Office of the General Counsel.

(3) Office of Appeals.

(4) Office of the Administrative Law Judge.

(5) Office of the Secretary.

(6) Office of Merit Systems Review and Studies.

(7) Office of Administration.

(8) Office of Legislative Counsel.

(9) Field Offices.

(b) *Office of the Managing Director.* The Managing Director has responsibility for management of all agency operations and programs which support the work of the Board, including supervision of the Board's field offices. The Managing Director, who reports directly to the Chairwoman as chief executive officer, has been delegated authority to make all final decisions in the performance of the Board's personnel management, fiscal management, general administrative support services, procurement and contracts, personnel, document security and claims.

(c) *Office of the General Counsel.* This office provides legal advice to the Board and its staff and where appropriate under 5 U.S.C. 1205(h) represents the Board in civil actions brought in connection with any of its functions. It also participates in the review of the rules and regulations of OPM on their face and as implemented.

(d) *Office of Appeals.* This office has the following functions:

(1) reviews the decisions of presiding officials in the field;

(2) processes petitions for review and interlocutory appeals including recommending appropriate action, and recommending reopenings by the Board:

(3) adjudicates cases instituted prior to the effective date of the Act; and

(4) prepares proposed decisions for the Board in interlocutory appeals and actions brought under its appellate jurisdiction which have previously been adjudicated in the field offices.

(e) *Office of the Administrative Law Judge.* This office is headed by an Administrative Law Judge (ALJ) appointed pursuant to 5 U.S.C. 3105. The ALJ's conduct formal adjudications as provided under the Administrative Procedure Act and issue decisions in accordance with 5 U.S.C. 557. The ALJ's hear cases as assigned by the Board which are particularly sensitive or difficult. Such cases may arise under either the Board's appellate or original jurisdiction.

(f) *Office of the Clerk of the Board.* This office maintains official records of actions by the Board and its members; dockets and tracks all cases pending before the Board; responds to requests for access to Board records; distributes Board orders and publications; makes initial determinations for information under the Freedom of Information and Privacy Acts; and is the official keeper of the Board's seal.

(g) *Office of Merit Systems Review and Studies.* This office conducts studies of the civil service and other merit systems under 5 U.S.C. 1205(a)(3) to determine whether they are free of prohibited personnel practices and reviews the significant actions of the OPM. The office also participates in the review of the rules and regulations of OPM on their face and as implemented by the agencies.

(h) *Office of Administration.* This office carries out the financial and personnel management functions of the Board and provides general administrative services.

(i) *Office of Legislative Counsel.* This office has primarily two functions. First, it undertakes duties relating to Congress and other Executive agencies including: preparing testimony; responding to inquiries; and drafting legislation and bill reports. Second, it provides informational services for the Board including responding to inquiries of the press and the public and assisting in the preparing and distributing of Board publications.

(j) *Field Offices.* The Board has eleven field offices located throughout the country as set forth in Appendix II of Part 1201. The primary function of the field offices is to adjudicate cases arising under the Board's appellate jurisdiction in accordance with 5 CFR Part 1201 and to render initial decisions as set forth at 5 CFR 1201.111. Each field office is headed by a Chief Appeals Officer who reports to the Managing Director through the Deputy Managing Director.

(5 U.S.C. 1205(g) and (i))

[46 FR 30999, June 12, 1981, as amended at 49 FR 35331, Sept. 7, 1984]

§ 1200.11 The Special Counsel.

The Special Counsel was established by the Civil Service Reform Act as the unit within the Board charged with the investigation and prosecution of prohibited personnel practices and certain other violations of Federal law. The Special Counsel's duties include bringing actions before the Board for adjudication. The Reform Act provides independence for the Special Counsel in carrying out these investigative and prosecutorial functions by separating those functions from the Board's adjudicatory role. A further discussion of the function and duties of this office is found at 5 CFR Part 1250.

(5 U.S.C. 1205(g) and (i))

[46 FR 30999, June 12, 1981]

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APPENDIX II TO PART 1201—APPROPRIATE REGIONAL OFFICE FOR FILING APPEALS

AUTHORITY: 5 U.S.C. 1101 et seq., unless otherwise noted.

SOURCE: 44 FR 38349, June 29, 1979, unless otherwise noted.

Subpart A—Jurisdiction and Definitions

§ 1201.1 General.

The Board exercises two types of jurisdiction, original and appellate.

§ 1201.2 Original jurisdiction: Definition and application.

The Board has original jurisdiction over cases in which no formal agency action has been taken including:

(a) Actions brought by the Special Counsel;

(b) Requests for informal hearings in cases of persons removed from the Senior Executive Service;

(c) Employee disciplinary actions under the Federal Employees Flexible and Compressed Work Schedule Act; and

(d) Actions against administrative law judges.

§ 1201.3 Appellate jurisdiction: Definition and application.

(a) *Appellate jurisdiction generally.* The Board has appellate jurisdiction over cases specified in the Act where there have been prior actions within an agency. This includes certain decisions of the Office of Personnel Management relating to retirement and insurance benefits. This appellate jurisdiction includes:

(1) Removal or reduction-in-grade of competitive or preference eligible employees;

(2) Denial of within-grade step increases;

(3) Actions based upon removal, suspension for more than 14 days, reduction-in-grade or pay, or furlough for 30 days or less;

(4) Certain actions relating to the Senior Executive Service;

(5) Actions otherwise appealable to the Board involving an allegation of discrimination;

(6) Determinations relating to disability retirement, health insurance and annuities;

(7) Actions involving reinstatement of preference eligibles; and

(8) Those actions for which jurisdiction may be properly granted by regulations of the Office of Personnel Management (OPM).

(b) *Limitations on appellate jurisdiction, collective bargaining agreements and election of procedures.* (1) Where an employee is covered by a collective bargaining agreement which provides for an exclusive negotiated grievance procedure for actions involving discrimination under 5 U.S.C. 7702, reduction in grade or adverse actions under either 5 U.S.C. 4303 or 7512, the employee may raise the matter under either the negotiated grievance procedure or under the Board's appellate procedures but not both. Other matters which are covered by a negotiated grievance procedure under 5 U.S.C. 7121 may not be appealed to the Board.

(2) *Election of procedure.* Where a covered employee has initially elected to utilize a nonexclusive negotiated grievance procedure, he/she may not appeal the matter to the Board. This election, however, does not prohibit an employee from requesting Board review of a decision involving discrimination.

[44 FR 38349, June 29, 1979, as amended at 47 FR 15309, Apr. 9, 1982]

§ 1201.4 General definitions.

(a) *Presiding official.* Any person designated by the Board to preside over any hearing or to make a decision on the record, including an attorney-examiner, an administrative law judge, the Board, or any of the Members of the Board.

(b) *The Act.* The Civil Service Reform Act of 1978 (Pub. L. 95-454).

(c) *Pleadings.* Briefs, motions, petitions and attachments.

(d) *Motions.* A request to a presiding official to take a particular action.

(e) *Appropriate field office.* That office listed in Appendix II in the area where the appellant's duty station was located when the agency action was taken. This does not however, limit the Board from transferring the matter for adjudication to another regional office when to do so would facilitate processing.

(f) *Party.* An individual, agency, intervenor, the Office of Personnel Management, or the Special Counsel who is participating in an adjudication before the Board.

(g) *Petition for appeal.* The request filed with a Board field office for review of an agency action.

(h) *Petition for review.* The request filed with the three-member Board in Washington, D.C., for review of an initial decision of a presiding official.

(i) *Day.* Calendar day.

[44 FR 38349, June 29, 1979, as amended at 46 FR 42437, Aug. 21, 1981]

Subpart B—Hearing Procedures for Appellate Cases

GENERAL

§ 1201.11 Scope and policy.

The rules in this subpart apply to appellate proceedings of the Board except as otherwise provided in § 1201.13. These rules also apply to original jurisdiction proceedings of the Board except as otherwise provided in Subpart C. It is the policy of the

Board that these rules shall be applied in a manner which expedites the processing of each case, but with due regard to the rights of all parties.

[44 FR 38349, June 29, 1979, as amended at 47 FR 937, Jan. 8, 1982]

§ 1201.12 Revocation, amendment or waiver of rules.

The Board may revoke, amend or waive any of these regulations as they apply generally to all cases in accordance with the applicable procedures of the Administrative Procedure Act. A presiding official may waive a Board regulation in an individual case for good cause shown if application of the regulation is not required by statute.

§ 1201.13 Internal appeals of Board employees.

Appeals of actions taken against Board employees will be assigned to administrative law judges for adjudication pursuant to this subchapter, provided, however, that the policy of the Board will be to insulate such adjudications from agency involvement insofar as possible. Accordingly, initial decisions in such cases shall not be disturbed by the Board except in cases of demonstrated harmful procedural irregularity in the proceedings before the administrative law judge or clear error of law. In addition, the Board, as a matter of policy, will defer ruling on any interlocutory appeals or motions to disqualify the administrative law judge assigned to such cases until the initial decision has been issued.

[47 FR 937, Jan. 8, 1982]

PETITIONS FOR REVIEW OF AGENCY ACTION, PLEADINGS

§ 1201.21 Notice of appeal rights.

When an agency issues a decision notice to an employee on a matter appealable to the Board the agency shall provide:

(a) Notice of the time limits for appealing to the Board and the address of the appropriate Board office for filing the appeal;

(b) A copy of the Board's regulations;

(c) A copy of the appeal from set forth in Appendix I or I-A of this part.

(d) Notice of any applicable rights to a grievance procedure.

(e) Notice of the opportunity to request the voluntary expedited appeals procedure set forth at § 1201.200 through § 1201.222, including a description of the procedure, as set forth in the Attachment to the appeal form in Appendix I-A.

[50 FR 18222, Apr. 30, 1985]

§ 1201.22 Filing of petitions for appeal and response.

(a) *Place of filing.* Petitions and responses shall be filed at the appropriate Board regional office.

(b) *Time of Filing.* Petitions for appeal must be filed during the period beginning with the day after the effective date of the action being appealed and ending on the twentieth (20th) day after the effective date. Agency responses to petitions for appeal must be filed within 15 days after agency receipt of the appellant's petition. The date of filing shall be determined by the date of mailing indicated by the postmark date. If the filing is by personal delivery, it shall be considered filed on the date it is received in the regional office.

(c) *Method of Filing.* Filing must be made either by personal delivery during normal business hours to the appropriate Board regional office or by mail addressed to that office

[44 FR 38349, June 29, 1979, as amended at 46 FR 42437, Aug. 21, 1981; 47 FR 54419, Dec. 3, 1982]

§ 1201.23 Computation of time.

To compute the number of days for filing, the first day counted shall be the day after the event from which the time period begins to run and the last day of filing shall be included in the computation.

Example: If an employee receives a decision notice which is effective on June 1, the 20 days for filing starts to run on June 2. The filing must be made by June 21. If June 21 is a Saturday, the last day for filing would be Monday, June 23.

§ 1201.24 Content of petition for appeal, right to hearing.

(a) *Contents.* Petitions for appeal must be filed by the employee, his/her designated representative or a party properly substituted under § 1201.35. Petitions may use any format, including letter form, but must contain the following:

(1) The name of the appellant and the acting agency;

(2) The action taken by the agency and its effective date;

(3) A request for hearing if desired;

(4) A statement of the reasons why the appellant believes the agency action to be wrong;

(5) A statement of the action the appellant would like the presiding official to order;

(6) The name of the appellant's representative, if any;

(7) Attachment of any relevant documents including the decision notice;

(8) A statement as to whether the appellant or anyone acting on his/her behalf has filed a grievance or complaint with any agency regarding this matter;

(9) Signature by the appellant and representative, if any. Failure to raise a claim or defense in the petition shall not bar its submission later unless to do so would prejudice the rights of the other parties and unduly delay the proceedings;

(10) A request, if an appellant desires, to have matter processed under the voluntary expedited appeals procedure set forth at §§ 1201.200 through 1201.222.

(b) *Use of the form.* Completion of the form in Appendix I or I-A of this part shall constitute compliance with paragraph (a) of this section and § 1201.31 if a representative is designated in the form.

(c) *Right to hearing.* Under 5 U.S.C. 7701, an appellant has a right to a hearing. Alternatively, the appellant may choose to have the determination based on the record. If the parties choose to utilize the voluntary expedited appeals procedure, the procedures for a hearing shall be in accordance with § 1201.205.

[50 FR 18222, Apr. 30, 1985]

§ 1201.25 Content of agency response, request for hearing.

(a) *Content.* Agency responsse to petitions for appeal shall contain the following:

(1) The name of the appellant and the acting agency;

(2) A statement of the agency action taken against the appellant and the reasons therefor;

(3) A specific response to each allegation of the appellant's petition admitting, denying or explaining each in whole or in part;

(4) All documents contained in the agency record of the proceeding;

(5) Request for hearing and the reasons therefor;

(6) A declination by the agency, if the voluntary expedited appeals procedure has been requested by the appellant and the agency declines to use the process; and

(7) Designation of and signature by the authorized agency representative.

(b) *Request for hearing.* The agency may request a hearing on the appeal which may be granted at the discretion of the presiding official.

[50 FR 18222, Apr. 30, 1985]

§ 1201.26 Number of pleadings, service, and response.

(a) *Number.* One original and one copy of a petition for appeal or petition for review must be filed with the appropriate Board office. One original of all other subsequent pleadings must be filed.

(b) *Service*—(1) *Service by the Board.* The Board will serve copies of a petition for appeal or petition for review upon the parties to the proceeding by mail. The Board will attach a service list indicating the names and addresses of the parties to the proceeding or their designated representatives.

(2) *Service by the parties.* The parties shall serve on each other one copy of all pleadings, as defined by § 1201.4(c), with the exception of petitions for appeal or review. Service shall be made by mailing or by delivering personally a copy of the pleading to each party on the service list previously provided by the Board. Each pleading must be accompanied by a certificate of service specifying how and when service was made. It shall be the duty of all parties to notify the Board and one another in writing of any changes in the names or addresses on the service list.

(c) *Time limitations for response to pleadings.* Unless otherwise specified by the presiding official or these regulations, a party shall have 10 days from receipt to respond to a pleading served by another party.

(d) *Paper size.* Pleadings and attachments must be submitted on 8½×11 inch paper size to comply with standards established for U.S. Courts.

[46 FR 62045, Dec. 22, 1981, as amended at 47 FR 36801, Aug. 24, 1982; 47 FR 54419, Dec. 3, 1982]

§ 1201.27 Class actions.

(a) *Petition.* One or more employees may file an appeal as representatives of a class of employees. The presiding official shall hear the case as a class action if he/she finds a class action will be the most efficient and fair way to adjudicate the appeal and will adequately protect the interests of all parties.

(b) *Procedure.* The presiding official shall determine within 30 days whether to hear the appeal as a class action and will consider any opposition thereto.

(c) *Standards.* For the purpose of determining whether it is appropriate to treat an appeal as a class action, the presiding official will be guided but not controlled by the applicable provisions of the Federal Rules of Civil Procedure.

PARTIES, PRACTITIONERS AND WITNESSES

§ 1201.31 Representation.

(a) All parties to an appeal may be represented in any matter relating to the appeal. The parties shall designate their representatives, if any, in the petition for appeal or responsive pleading. Any subsequent changes in representation shall also be in writing and submitted to the presiding official.

(b) A party may choose any representative so long as the person is willing and available to serve. However, the other party or parties may challenge the representative on the grounds of conflict of interest or conflict of position. This challenge must be made by motion to the presiding official within 10 days after receipt of the notice of designation, and shall be ruled upon prior to consideration of the case on the merits. These procedures apply equally to original and subsequent designations of representatives. In the event the selected representative is disqualified, the party affected shall be given a reasonable time to obtain another representative.

(c) The presiding official, on his/her own motion, may disqualify a party's representative on the grounds described in subsection (b) above.

§ 1201.32 Witnesses; right to representation.

Witnesses shall have the right to representation when testifying.

§ 1201.33 Federal witnesses.

Every Federal agency shall make its employees available to furnish sworn statements or to appear as witnesses at the hearing when requested by the presiding official. When providing such statements or testimony, witnesses shall be in official duty status.

§ 1201.34 Intervenors.

(a) *Explanation.* Intervenors are persons who want to participate in a proceeding because they feel what takes place at the proceeding, or its outcome, may affect their rights or duties. Intervenors as a "matter of right" are those parties who have a statutory right to participate. "Permissive" intervenors are those parties who may be permitted to participate if the proceeding will affect them directly and is otherwise appropriate under law. A request to intervene may be made by motion to the presiding official under §1201.55.

(b) *Intervenors as a matter of right.* (1) The Director of OPM may intervene as a matter of right under 5 U.S.C. 7701(d)(1). Such intervention shall be made at the earliest practicable time.

(2) The Special Counsel may intervene as a matter of right under 5 U.S.C. 1206(i). Such intervention shall be made at the earliest practicable time.

(c) *Permissive intervenors.* (1) Any person may, by motion, request the presiding official for permission to intervene. The motion shall state the reasons why the person should be permitted to intervene.

(2) A motion for permission to intervene will be granted where the requestor will be affected directly by the outcome of the proceeding, including any person alleged to have committed a prohibited personnel practice under 5 U.S.C. 2302(b). Denial of a motion for permissive intervention may be appealed to the Board under § 1201.91.

(d) *Role of intervenors.* Intervenors will be considered full parties to the hearing and will have the same rights and duties as a party with two exceptions:

(1) Intervenors will not have an independent right to a hearing; and

(2) Permissive intervenors may participate only on the issues affecting them, as determined by the presiding official.

§ 1201.35 Substitution.

(a) If an appellant dies or is otherwise unable to pursue the appeal, the action shall be completed upon substitution of proper parties or by the representative of the original party. Substitution will not be permitted where the interests of the original party have terminated because of the death or other disability.

(b) A motion for substitution shall be filed by the representative or proper party within 90 days after the death of the appellant or other disabling event.

§ 1201.36 Consolidation or joinder.

(a) *Explanation.* (1) Consolidation may occur where two or more parties have cases united because they contain identical or similar issues. For example, individual appeals under a single reduction-in-force action might be consolidated.

(2) Joinder may occur where one person has two or more appeals pending and they are united for consideration. For example, a single appellant who has one appeal pending challenging a 30-day suspension and another appeal pending challenging a subsequent dismissal might have the cases joined.

(b) *Action by presiding official.* A presiding official may consolidate or join cases on his/her own motion or on the motion of a party if to do so would:

(1) Expedite processing of the cases; and

(2) Not adversely affect the interests of the parties.

§ 1201.37 Fees.

(a) *Attorney fees.* Except as provided in subsection (a)(1) of this section, the presiding official may require payment by the agency of reasonable attorney fees if the appellant is the prevailing party and payment is warranted in the interests of justice. This shall include but not be limited to any case in which a prohibited personnel practice was engaged in by the agency or any case in which the agency's action was clearly without merit.

(1) If an appellant is the prevailing party and the decision is based on a finding of discrimination prohibited under 5 U.S.C. 2302(b)(1), the payment of attorney fees shall be in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)).

(2) Requests for payment of attorney fees shall be made by motion within 10 days of final date of a decision under § 1201.113 in favor of the appellant. The agency may file a responsive pleading within 10 days of receipt of the motion. The ruling of the presiding official on such motions shall be made an addendum to the final decision. A petition for review by the Board of this issue alone shall be submitted within 30 days of the receipt of the presiding official's determination if the case is not reviewed or reopened.

(b) *Witness fees.* (1) Federal employees: Employees of a Federal agency testifying in any proceeding before the Board of making a statement for the record shall be in official duty status and shall not receive witness fees. Payment of travel and per diem expenses shall be governed by applicable law and regulations.

(2) Other witnesses. Witnesses who are not covered by subsection (b)(1) of this section are entitled to the same witness fees as those paid subpenaed witnesses under 28 U.S.C. 1821.

(3) Payment of witness fees. Witness fees shall be paid by the party requesting the presence of the witness and shall be tendered to the witness at the time the subpena is served, or, when the witness appears voluntarily, at the time of appearance.

PRESIDING OFFICIALS

§ 1201.41 Presiding officials.

(a) *Exercise of authority.* Presiding officials may exercise authority as provided in paragraph (b) of this section upon their own motion or upon the motion of a party, as appropriate.

(b) *Authority.* Presiding officials shall conduct fair and impartial hearings and take all necessary action to avoid delay in the disposition of all proceedings. They shall have all powers necessary to that end unless otherwise limited by law, including but not limited to, the authority to:

(1) Administer oaths and affirmations;

(2) Issue subpenas in accordance with § 1201.81;

(3) Rule upon offers of proof and receive relevant evidence;

(4) Rule upon the institution of discovery procedures as appropriate under § 1201.73;

(5) Convene a hearing as appropriate, regulate the course of the hearing, maintain decorum and exclude from the hearing any disruptive persons;

(6) Exclude from the hearing any witness whose later testimony might be colored by testimony of other witnesses or any persons whose presence might have a chilling effect on testifying witness;

(7) Rule on all motions, witness and exhibit lists and proposed findings;

(8) Require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;

(9) Order the production of evidence and the appearance of witnesses whose testimony would be relevant, material and nonrepetitious;

(10) Impose sanctions as provided under § 1201.43 of this part;

(11) Hold prehearing conferences for the settlement and simplification of issues; and

(12) File initial decisions.

§ 1201.42 Disqualification of presiding official.

(a) In the event that a presiding official considers himself/herself disqualified, he/she shall withdraw from the case, stating on the record the reasons therefor, and shall immediately notify the Board of the withdrawal.

(b) Any party may file a motion requesting the presiding official to withdraw on the basis of personal bias or other disqualification and specifically setting forth the reasons for the request. This motion shall be filed as soon as the party has reason to believe there is a basis for disqualification.

(c) The presiding official may rule on the motion. If the motion is denied the party requesting withdrawal may request certification of the issue to the Board as an interlocutory appeal under § 1201.91. Failure of the party to request certification shall be considered a waiver of the request for withdrawal.

§ 1201.43 Sanctions.

The presiding official may impose sanctions upon the parties as necessary to serve the ends of justice, including but not limited to the instances set forth in paragraphs (a), (b), and (c) of this section.

(a) *Failure to comply with an order.* When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control; a request for admission, and/or production of witnesses, the presiding official may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(b) *Failure to prosecute or defend.* If a party fails to prosecute or defend an appeal, the presiding official may dismiss the action with prejudice or rule for the appellant.

(c) *Failure to make timely filing.* The presiding official may refuse to consider any motion or other action which is not filed in a timely fashion in compliance with this subpart.

HEARINGS

§ 1201.51 Scheduling the hearing.

The notice of initial hearing shall fix the date, time and place of hearing. The hearing shall be scheduled not earlier than 15 days after the date of the notice unless the parties agree to an earlier date. The agency, upon request of the presiding official, shall provide appropriate hearing space. Motions for postponement by either party shall be made in writing and accompanied by an affidavit setting forth the reasons for the request and shall be granted only upon a showing of good cause.

§ 1201.52 Public hearings.

Hearings shall be open to the public. However, the presiding official may order a hearing or any part thereof closed, where to do so would be in the best interests of the appellant, a witness, the public or other affected persons. Any order closing the hearing shall set forth the reasons for the presiding official's decision. Any objections thereto shall be made a part of the record.

§ 1201.53 Transcript.

(a) *Preparation.* A verbatim record made under the supervision of the presiding official shall be kept of every hearing and shall be the sole official record of the proceeding. Upon request, a copy of a transcript of the hearing shall be made available to the parties upon payment of costs. Exceptions to the payment requirement may be granted in extenuating circumstances for good cause shown. Motions for an exception shall be made in writing and accompanied by an affidavit setting forth the reasons for the request and shall be granted upon a showing of good cause. Requests for copies of transcripts shall be directed to the official hearing reporter, or the presiding official as appropriate. The presiding official may, by agreement with the person making the request, make arrangements with the official hearing reporter for required services to be charged to the requester.

(b) *Corrections.* Corrections to the official transcript will be permitted upon motion. Motions for correction must be submitted within 10 days of the receipt of the transcript. Corrections of the official transcript will be permitted only when errors of substance are involved and only upon approval of the presiding official.

[44 FR 38349, June 29, 1979, as amended at 46 FR 62046, Dec. 22, 1981]

§ 1201.54 Official record.

The transcript of testimony and exhibits, together with all papers and motions filed in the proceedings, shall constitute the exclusive and official record.

§ 1201.55 Motions.

(a) *Form.* Motions shall be in writing except that oral motions may be made during the course of a hearing. All motions shall state the reasons in support thereof. Written motions shall be submitted to the presiding official or the Board, as appropriate, and served upon all other parties.

(b) *Objection.* If a motion is made, in writing or orally, all other parties shall have an opportunity to object to it.

(c) *Motions for extension of time.* Motions for extension of time will be granted only for good cause shown.

[44 FR 38349, June 29, 1979, as amended at 47 FR 54419, Dec. 3, 1982]

§ 1201.56 Burden and degree of proof, affirmative defenses.

(a) *Burden and degree of proof.* (1) Agency: Under 5 U.S.C. 7701(c)(1) the agency action must be sustained by the Board if:

(i) It is brought under 5 U.S.C. 4303 and is supported by substantial evidence; or

(ii) It is brought under any other provision of law or regulation and is supported by a preponderance of the evidence.

(2) *Appellant:* The appellant shall have the burden of proof as to issues of jurisdiction and timeliness of filing.

(b) *Affirmative defenses of the appellant.* Under 5 U.S.C. 7701(c)(2), the Board is required to overturn the action of the agency even where the agency has met the evidentiary standard set forth in subsection (a), above, in any case where the appellant:

(1) Shows harmful error in the application of the agency's procedures in arriving at such decision;

(2) Demonstrates that the decision was based on any prohibited personnel practice described in 5 U.S.C. 2302(b); or

(3) Shows that the decision was not in accordance with law.

(c) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) *Substantial evidence:* That degree of relevant evidence which a reasonable mind, considering the record as a whole, might accept as adequate to support a conclusion that the matter asserted is true.

(2) *Preponderance of the evidence:* That degree of relevant evidence which a reasonable mind, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

(3) *Harmful error:* Error by the agency in the application of its procedures which, in the absence or cure of the error, might have caused the agency to reach a conclusion different than the one reached. The burden is upon the appellant to show that based upon the record as a whole the error was harmful, i.e., caused substantial harm or prejudice to his/her rights.

(d) *Moving forward.* In cases where action has been taken against an employee by the agency, the agency shall present its case first. The appellant may then present evidence.

§ 1201.57 Closing the record.

(a) When there is a hearing, the record shall be closed at the conclusion of the hearing. However, when the presiding official allows the parties to submit argument, briefs or documents previously identified for introduction into evidence, the record shall be left open for such time as the presiding official grants for that purpose.

(b) If the appellant waives a hearing, the record shall be closed on the date set by the presiding official as the final date for the receipt of submissions of the parties to the matter.

(c) Once the record is closed, no additional evidence or argument shall be accepted into the record except upon a showing that new and material evidence has become available which was not readily available prior to the closing of the record. However, the presiding official shall make part of the record any motions for attorney fees, any supporting documentation, and determinations thereon, and any approved correction to the transcript.

EVIDENCE

§ 1201.61 Service of documents.

Any document submitted with regard to any pleading shall be served upon all parties to the proceeding.

[47 FR 54420, Dec. 3, 1982]

§ 1201.62 Admissibility.

(a) Evidence or testimony may be excluded from consideration by the presiding official if it is irrelevant, immaterial or unduly repetitious.

(b) All evidence and testimony offered in the hearing, but excluded by the presiding official, shall be described and that description made a part of the record.

§ 1201.63 Production of evidence by order of presiding official.

At any stage of a proceeding, the presiding official may request further evidence converning an issue and order its submission.

§ 1201.64 Production of statements.

After an individual has given evidence in a proceeding, any party may request a copy of any prior signed statement made by that individual which is relevant to the evidence given. If the party refuses to furnish the statement, the relevant evidence given, may be excluded from consideration.

§ 1201.65 Admission of facts and genuineness of documents.

(a) The presiding official may order any party to respond to requests for the admission of the genuineness of any relevant documents identified within the request or the truth of any relevant matters of fact or application of law to the facts as set forth in the request.

(b) Within the time period prescribed by the presiding official, the party on whom the request is served must submit to the presiding official:

(1) A sworn statement specifically denying, admitting or expressing a lack of knowledge regarding the specific matters on which an admission is requested; and/or

(2) An objection to the request in whole or in a part on the ground that the matters contained therein are privileged, irrelevant or otherwise improper.

§ 1201.66 Stipulations.

The parties may stipulate as to any matter of fact. Such a stipulation will satisfy a party's burden of proving the fact alleged.

§ 1201.67 Official notice.

The presiding official on his/her own motion or on motion of a party, may take official notice of matters of common knowledge or matters that can be verified. Official notice taken of any fact satisfies a party's burden of proving the fact noticed.

DISCOVERY

§ 1201.71 Statement of purpose.

Proceedings before the Board shall be conducted as expeditiously as possible with due regard to the rights of the parties. Discovery is designed to enable a party to obtain relevant information needed for preparation of the party's case. These regulations are intended to provide a simple method of discovery. They will be interpreted and applied so as to avoid delay and to facilitate adjudication of the case. The parties are expected to initiate and complete needed discovery with a minimum of Board intervention.

[48 FR 5214, Feb. 4, 1983]

§ 1201.72 Explanation and scope.

(a) *Explanation*: Discovery is the process apart from the hearing whereby a party may obtain relevant information from another person, including a party, which has not otherwise been provided. Relevant information includes information which appears reasonably calculated to lead to the discovery of admissible evidence. This information is obtained for the purpose of assisting the parties in preparing and presenting their cases. The Federal Rules of Civil Procedure may be used as a general guide for discovery practices in proceedings before the Board. However, the federal rules shall be deemed to be instructive rather than controlling.

(b) *Scope*: Any person may be examined regarding any nonprivileged matter which is relevant to the issues involved in the appeal, including the existence, description, nature, custody, condition, and location of documents or other tangible things, and the identity and location of persons having knowledge of relevant facts. Discovery requests to nonparties and nonparty federal agencies and employees are limited to information which appears directly material to the issues involved in the appeal.

(c) *Methods*: Discovery may be obtained by one or more of the methods provided under the Federal Rules of Civil Procedure, including: written interrogatories, depositions, production of documents or things for inspection or copying, and requests for admission addressed to parties. Failure to deny a request for admission shall not be deemed to constitute a binding admission.

[48 FR 5214, Feb. 4, 1983]

§ 1201.73 Procedures governing discovery.

(a) Discovery from a party. A party seeking discovery from another party shall initiate the process by serving a request for discovery on the other party. The request for discovery shall—

(1) state the time limit for responding, as prescribed in § 1201.73(d), and

(2) in the case of a request for deposition of a party or an employee of a federal agency party, (i) shall specify

the time and place of the taking of the deposition, and (ii) shall also be served on the person to be deposed.

When a request for discovery is directed to an officer or employee of a federal agency party, the agency shall make the officer or employee available on official time for the purpose of responding to the request, and shall assist the officer or employee as necessary in providing relevant information that is available to the agency. For purposes of discovery under these regulations, a party includes an intervenor. (See 5 CFR 1201.4(f))

(b) Discovery from a nonparty including nonparty federal agencies. Parties are encouraged to attempt to obtain voluntary discovery from nonparties whenever possible. A party seeking discovery from a nonparty federal agency or employee shall initiate the process by serving a request for discovery on the nonparty federal agency or employee. Discovery from other nonparties may be initiated by serving a request for discovery on the nonparty directly. Absent such a request or upon failure to obtain voluntary cooperation, discovery from a nonparty may be obtained by a written motion directed to the presiding official, showing the relevance, scope and materiality of the particular information sought and, in addition in the case of a deposition, the date, time, and place of the proposed deposition. A ruling on the motion will be issued by an authorized official of the Board and will be served on the moving party together with a subpena, if approved, directed to the individual or entity from which discovery is sought, specifying the manner and time limit for compliance. It shall be the responsibility of the moving party to serve or arrange for service of a Board-approved discovery request and subpena on the individual or entity.

(c) Responses to discovery requests. (1) A party, or a federal agency which is not a party, shall answer a discovery request within the time provided by § 1201.73(d)(2), either by furnishing to the requesting party the information or testimony requested or agreeing to make deponents available to testify within a reasonable time, or by stating an objection to the particular request, and the reasons for objection.

(2) Upon the failure or refusal of a party to respond in full to a discovery request, or a nonparty to respond in full to Board-approved discovery, the requesting party may file with the presiding official a motion to compel. A copy of the motion shall be served on the other party and on any nonparty entity or person from whom the discovery was sought. The motion shall be accompanied by:

(i) A copy of the original request and a statement showing the relevancy and materiality of the information sought.

(ii) A copy of the objections to discovery or, where appropriate, a verified statement that no response has been received.

(3) The other party and any other entity or person from whom discovery was sought may respond to the motion to compel within the time limits set forth in (d)(4) below.

(d) Time limits.

(1) Initial requests or motions for discovery shall be initiated within 25 days after the date of issuance of the Board's order to the respondent to produce the agency file and response.

(2) A party or nonparty shall respond to a discovery request promptly, but not later than 15 days after receipt of the request or order of the Board. Any discovery requests following the initial request shall be served within 10 days of receipt of the prior response, unless otherwise directed.

Deposition witnesses shall give their testimony at the time and place stated in the request for deposition or in the subpena, unless otherwise agreed by the parties.

(3) A motion to depose nonparties (along with a request for a subpena) shall be submitted to the presiding official within the time limits set forth in paragraph (d)(1) above or as otherwise directed.

(4) A motion for an order compelling discovery shall be filed with the presiding official within 5 days of receipt of objections, or within 5 days of the expiration of the time limit for response when no response is received. Opposition to a motion to compel must be filed with the presiding offi-

cial within 5 days of receipt of the motion.

(5) Discovery shall be completed within the time designated by the presiding official, but no later than 65 days after the filing of the appeal. A different time limit may be set by the presiding official after due consideration of the particular situation, including the dates set for hearing and closing of the case record. In cases involving a hearing, discovery shall be completed 14 days prior to the date set for hearing, unless the parties consent to a later completion date.

(6) The time limits prescribed in this section may be altered by the presiding official upon a showing of good cause; however, even upon such a showing, the presiding official should not normally permit discovery to be completed later than 14 days prior to the date set for hearing if a party objects thereto.

[48 FR 5214, Feb. 4, 1983; 48 FR 8425, Mar. 1, 1983]

§ 1201.74 Orders for discovery.

(a) *Motion for an Order Compelling Discovery.* Motions for orders compelling discovery and motions for appearance of nonparties shall be submitted to the presiding official in accordance with section 1201.73(c)(2) and (d)(4) above.

(b) *Content of Order.* Any order issued shall include, where appropriate:

(1) Provision for notice to the person to be deposed as to the time and place of such deposition;

(2) Such conditions or limitations concerning the conduct or scope of the proceedings or the subject matter as may be necessary to prevent undue delay or to protect a party or other individual or entity from undue expense, embarrassment or oppression;

(3) Limitations upon the time for conducting depositions, answering written interrogatories, or producing documentary evidence; and

(4) Other restrictions upon the discovery process as determined by the presiding official.

(c) *Noncompliance.* Failure to comply with an order compelling discovery may subject the noncomplying party to sanctions under 5 CFR 1201.43.

[48 FR 5215, Feb. 4, 1983]

§ 1201.75 Taking of depositions.

Depositions may be taken before any person not interested in the outcome of the proceedings who is authorized by law to administer oaths.

[47 FR 28908, July 2, 1982]

SUBPENAS

§ 1201.81 Motions for subpenas.

(a) *Motion.* A motion for the issuance of subpenas requiring the attendance and testimony of witnesses or the production of documents or other evidence under 5 U.S.C. 1205(b)(2)(A) shall be submitted to the presiding official.

(b) *Form.* Motions for subpenas shall be submitted in writing to the presiding official and shall specify with particularity the books, papers, or testimony desired and shall be supported by a showing of general relevance and reasonable scope and a statement of the facts expected to be proven thereby.

(c) *Rulings.* Where the presiding official does not have the authority to issue subpenas, the motion shall be referred with a recommendation for decision to an appropriate official. Such official shall be an administrative law judge or a Member of the Board, who shall promptly rule on the request. Where the presiding official has the authority he/she shall rule directly on the request.

(d) *Showing.* All requests for subpenas shall be supported by a showing of general relevance, reasonable scope and materiality of the evidence sought.

[44 FR 38349, June 29, 1979, as amended at 47 FR 28908, July 2, 1982]

§ 1201.82 Motion to quash.

Any person to whom a subpena is directed or any party may file a motion to quash or limit the subpena, setting forth the reasons why the subpena should not be complied with or why it should be limited in scope. This motion shall be filed with the presiding official.

[48 FR 5215, Feb. 4, 1983]

§ 1201.83 Service.

A subpena may be served by any person at least 18 years of age who is not a party, including a private process server or other person authorized to serve process in actions brought in state courts of general jurisdiction or in federal courts.

[48 FR 5215, Feb. 4, 1983]

§ 1201.84 Return of service.

The person who has served the subpena shall certify on the return of service that service was made (1) by delivery to the witness in person, (2) by registered or certified mail, or (3) by delivery to a responsible person (named) at the residence or place of business (as appropriate) of the person to be served, and that the prescribed fees have been tendered or provided for.

[48 FR 5215, Feb. 4, 1983]

§ 1201.85 Enforcement.

If a person has been served with a Board subpena but fails or refuses to comply with its terms, the party seeking compliance may apply to the presiding official, orally or in writing for enforcement. The party shall present the return of service and, except where the witness was required to appear before the presiding official, shall submit affidavit evidence of the failure or refusal to obey the subpena. The Board, pursuant to 5 U.S.C. 1205(c), may then request the appropriate United States district court to enforce the subpena.

[48 FR 5215, Feb. 4, 1983]

INTERLOCUTORY APPEALS

§ 1201.91 Explanation.

An interlocutory appeal is an appeal to the Board of a decision made by a presiding official during the course of a proceeding. This appeal may be permitted by the presiding official if he/she determines that the issue presented is of such importance to the proceeding that it requires the Board's immediate attention. The Board makes a decision on the issue and the presiding official acts in accordance with that decision.

§ 1201.92 Criteria for certification.

Rulings of the presiding official may not be appealed during the course of the hearing unless the official certifies the ruling for review by the Board. The presiding official shall certify a ruling for review only if it can be shown that:

(a) The ruling involves an important question of law or policy about which there is substantial ground for difference of opinion; and

(b) An immediate ruling will materially advance the completion of the proceeding, or denial of an immediate ruling will cause undue harm to a party or the public.

§ 1201.93 Procedure.

(a) *Motion for certification.* A party seeking review by interlocutory appeal must file a motion for certification within five days of receipt of the presiding official's determination. The motion shall include arguments in support of both the certification and the determination to be made by the Board.

(b) *Certification and review.* The presiding official shall grant or deny a motion for certification within the five days following receipt of all pleadings. If certification is granted, the record shall be referred to the Board. If certification is denied the issue may be raised in a petition for review.

(c) *Stay of hearing.* The stay of the hearing during the time an interlocutory appeal is pending is at the discretion of the presiding official. However, this will not preclude the Board from staying a hearing during the time an interlocutory appeal is pending.

EX PARTE COMMUNICATIONS

§ 1201.101 Explanation and definitions.

(a) *Explanation.* Ex parte communications are oral or written communications between decision-making personnel of the Board and an interested party to a proceeding without providing the other parties a chance to participate. Not all ex parte communications are prohibited, but only those which involve the merits of the case or those which violate other rules requiring submissions to be in writing. Accordingly, interested parties may make inquiries about such matters as the status of a case, when it will be heard, and the method for transmitting evidence to the Board. Parties may not inquire about such matters as what defense they should use, whether their evidence is adequate, or make a submission orally which is required to be in writing.

(b) *Definitions for purposes of this section.* (1) "Interested party" includes:

(i) Any party or representative of a party involved in a proceeding before the Board; or

(ii) Any other person who might be affected by the outcome of a proceeding before the Board.

(2) "Decision-making personnel" means any presiding official and/or an employee of the Board who reasonably can be expected to participate in the decision-making process of the Board.

§ 1201.102 Prohibition.

Ex parte communications concerning the merits of any matter before the Board for adjudication or which otherwise violate rules requiring written submissions is prohibited from the time the persons involved have knowledge that the matter may be considered by the Board until the Board has rendered a final decision.

§ 1201.103 Placement in the record; sanctions.

(a) Any communication made in violation of this section shall be made a part of the record and an opportunity for rebuttal allowed. If the communication was oral, a memorandum stating the substance of the discussion shall be placed in the record.

(b) The following sanctions shall be available:

(1) *Parties:* The presiding official may, in the interest of justice, require the offending party to show cause why his/her claim, interest or motion should not be dismissed, denied or otherwise adversely affected.

(2) *Board personnel:* Offending Board personnel will be treated in accordance with the Board's standards of conduct.

(3) *Other persons:* The presiding official may invoke such sanctions against offending parties as may be appropriate under the circumstances.

FINAL DECISIONS

§ 1201.111 Initial decision by presiding official.

(a) The presiding official shall prepare an initial (or recommended) decision within 25 days of the closing of the record. Such initial decision shall be immediately transmitted to the Clerk of the Board, to the Director of OPM and to all parties to the appeal, including named parties and intervenors, whether permissive or of right.

(b) Each initial decision shall contain:

(1) Findings of fact and conclusions, as well as the reasons or bases therefor, upon all the material issues of fact and law presented on the record;

(2) An order as to the final disposition of the case, including appropriate relief;

(3) The date upon which the decision will become effective, which, for purposes of this section, shall be deemed to be effective 35 days after issuance; and

(4) A statement of further right to appeal, including petition for review and judicial review.

[44 FR 38349, June 29, 1979, as amended at 49 FR 35331, Sept. 7, 1984]

§ 1201.112 Jurisdiction of presiding official.

After filing the initial decision, the presiding official shall retain jurisdiction over the case only to the limited extent necessary to correct the transcript, rule on a request by the appellant for attorney fees and take that action necessary to ensure compliance with the final decision.

§ 1201.113 Finality of decision.

The initial decision of the presiding official shall become final 35 days after issuance.

(a) *Exceptions.* The initial decision shall not become final if any party files a petition for review or if the Board reopens the case on its own motion within 35 days after issuance of the decision.

(b) *Petition for review denied.* If the Board denies all petitions for review, the initial decision shall become final five days after the issuance of the last denial.

(c) *Petition for review granted or case reopened.* If the Board grants a petition for review or reopens a case, the decision of the Board shall be the final decision.

(d) *Extensions.* The Board may extend the 35 day time limit for filing a petition for good cause shown.

(e) *Exhaustion.* Administrative remedies are considered exhausted when a decision becomes final in accordance within this section.

§ 1201.114 Filing of petition and cross petition for review.

(a) *Who may file.* Any party to the proceeding, the Director of OPM, or the Special Counsel may file a petition for review. The Director of OPM may request review only if he/she is of the opinion that the decision is erroneous and will have a substantial impact on any civil service law, rule, or regulation under the jurisdiction of the Office (5 U.S.C. 7701 (e)(2)). All submissions to the Board must contain an original signature of the appellant or the party's designated representative.

(b) *Cross petition for review.* If a timely petition for review is filed by a party, the Director of OPM or the Special Counsel, a cross petition for review may be filed by any other party, the Director of OPM or the Special Counsel within 25 days of the date of service of the petition for review. Issues not raised in the petition for review will not normally be considered by the Board unless raised in a timely filed cross petition for review.

(c) *Place for filing.* A petition for review, cross petition for review, responses thereto and all motions and pleadings associated therewith shall be filed with the Clerk of the Merit Systems Protection Board, Washington, D.C. 20419, either by personal delivery during normal business hours or by mail addressed to the Clerk of the Board.

(d) *Time for filing.* Any petition for review must be filed within 35 days of issuance of the initial decision. Any response to a petition for review or to a cross petition for review must be filed within 25 days after service of the petition or cross petition. The date of filing shall be determined by the date of mailing indicated by the postmark date. If no postmark date is evident on the mailing, it shall be presumed to have been mailed five days prior to receipt. If the filing is by personal delivery, it shall be considered filed on the date it is received by the Clerk of the Board.

(e) *Extension of time to file.* Motions for extensions of time to file a petition for review, cross petition or response shall be granted only upon a showing of good cause. Such motions must be filed in advance of the date on which the petition or other pleading is due. Motions for extension of time may be granted or denied without providing other parties the opportunity to comment, in the Board's discretion. Motions for extensions shall be accompanied by an affidavit showing good cause for the request, or shall be submitted pursuant to 28 U.S.C. 1746, which requires a signed and dated declaration or statement subscribed as true under penalty of perjury. Such affidavit or declaration must make a specific and detailed showing of the circumstances alleged to constitute good cause and must be accompanied by documentation or other evidence to support the matters asserted.

(f) *Late filings.* Unless an extension of time has been specifically granted by the Board pursuant to paragraph (e) of this section or is pending before the Board, any petition for review, cross petition for review, or response which is filed after time limits must be accompanied by a motion for waiver, and either an affidavit, or signed and dated declaration or statement subscribed as true under penalty of perjury, pursuant to 28 U.S.C. 1746 showing good cause for the untimely filing. Such showing must include:

(1) The reasons for failure to request an extension in advance of the filing date; and

(2) The reasons necessitating the late filing.

Any response filed to the motion for waiver may be included in the response to the petition for review, cross petition for review or response to the cross petition for review. Such response will not extend the period of time required by § 1201.114(d) to file a cross petition for review or to respond to the petition or cross petition. In the absence of a motion for waiver, the Board may, in its discretion, determine on the basis of the existing record whether there was good cause for the untimely filing or provide the proponent of the submission opportunity to show cause why it should not be dismissed or excluded as untimely.

(g) *Intervention.* (1) *By Director of OPM.* Pursuant to 5 U.S.C. 7701(d), the Director of OPM may intervene in a case before the Board under the standards set forth in that section, provided that right is exercised as early in the proceeding as practicable. For purposes of this paragraph, if the Director did not intervene in the case before the regional office, such intervention will be considered timely if it is filed within 20 days of the date of service of the cross petition or response to the petition for review, or if no response is filed, within 20 days of the date on which it is due. The Board may, in its discretion, at the Director's request, allow an additional period for the filing of the brief on intervention. A party may respond to the Director's brief within 15 days of the date of service. The Director shall serve his notice of intervention and brief on all parties.

(2) *By Special Counsel.* Pursuant to 5 U.S.C. 1206(i), the Special Counsel may intervene as a matter of right. For purposes of this paragraph, if the Special Counsel did not intervene in the case before the regional office, such intervention will be considered timely if it is filed within 20 days of the date of service of the cross petition or response to the petition for review, or if no response is filed, within 20 days of the date on which it is due. The Board may, in its discretion, at the Special Counsel's request, allow an additional period for the filing of the brief on intervention. A party may respond to the Special Counsel's brief within 15 days of the date of service. The Special Counsel shall serve his notice of intervention and brief on all parties.

(3) *Permissive intervenors.* Any person may, by motion, request the Board to grant permission to intervene. The motion shall state in detail the reasons why the person should be permitted to intervene. A motion for permission to intervene will be granted where the requester, including any person alleged to have committed a prohibited personnel practice under 5 U.S.C. 2302(b), will be affected directly by the outcome of the proceeding.

(h) *Service.* For purposes of § 1201.114, service occurs upon filing, as determined under paragraph (d) of this section. Copies of the petition for review, cross petition for review, response, and all other motions and pleadings in connection therewith must be served by the party submitting the pleading upon all parties to the proceeding and their designated representatives. Service may be made by mailing or delivering personally a copy of the submission to each party and representative on the service list for the initial decision. The submission must be accompanied by a certificate specifying how and when such service was made. It is the duty of all parties and representatives to notify the Board and each other in writing of any changes in the names and addresses on the service list.

(i) *Closing the record.* The record shall close upon expiration of the period for filing the response to the petition for review, or to the cross petition for review, or to the brief on intervention, if any, or on such other date as set by the Board. Once the record is closed, no additional evidence or argument shall be considered except upon a showing that new and material evidence has become available which was not available prior to the closing of the record.

[50 FR 28897, July 17, 1985; 50 FR 30801, July 30, 1985]

§ 1201.115 Contents of petition for review.

The petition for review shall set forth objections to the initial decision, supported by references to applicable laws or regulations, and with specific reference to the record. After providing an opportunity for response by other parties, the Board may grant a petition for review when it is established that:

(a) New and material evidence is available that, despite due diligence, was not available when the record was closed; or

(b) The decision of the presiding official is based on an erroneous interpretation of statute or regulation.

§ 1201.116 Procedure for review or reopening.

(a) In any case reopened or reviewed, the Board shall inform the parties of the reopening and review and may:

(1) Hear oral arguments;

(2) Require the filing of briefs;

(3) Remand the proceedings to the presiding official to take further testimony or evidence or make further findings or conclusions; or

(4) Take any other action necessary for final disposition of the case.

(b) The Board may affirm, reverse, remand, modify or vacate the decision of the presiding official, in whole or in part. Where appropriate, the Board shall issue a final decision and order a date for compliance.

§ 1201.117 Board reopening and reconsideration of case.

The Board may reopen and reconsider a decision of a presiding official on its own motion at any time, notwithstanding any other provisions of this part.

§ 1201.118 Judicial review.

Any employee or applicant for employment adversely affected by a final order or decision of the Board may obtain judicial review under the provisions of 5 U.S.C. 7703.

Subpart C—Hearing Procedures for Original Jurisdiction Cases

ACTIONS BROUGHT BY THE SPECIAL COUNSEL

§ 1201.121 Scope and compliance with Subpart B.

(a) *Scope.* The Board has original jurisdiction over actions brought by the Special Counsel and requests made by the Special Counsel for stays of certain personnel actions. The following sections of these regulations govern the proceedings concerning actions brought by the Special Counsel.

(b) *Compliance with Subpart B.* Except as otherwise expressly provided by this subpart, the Special Counsel shall comply with the regulations regarding hearing procedures set forth in Subpart B of this part in all complaints or requests he/she files with the Board.

§ 1201.122 Filing and service in Special Counsel actions.

(a) *Filing.* Two copies of all complaints and requests, together with numbered and tabbed exhibits or attachments, must be filed with the Office of the Clerk of the Board, and a copy must be served on all parties along with a certificate of service.

(b) *Service.* Service may be by mail or by personal delivery. Service by mail is accomplished by mailing to all parties or their representatives at the last known address a copy of the complaint or request, together with exhibits or attachments, and a certificate of service. Personal delivery is accomplished by delivering the documents described above to the business office or home of the person to whom it is addressed and leaving it with that person, or with a responsible person at that address.

[44 FR 38349, June 29, 1979, as amended at 46 FR 62045, Dec. 22, 1981; 47 FR 54420, Dec. 3, 1982; 49 FR 35331, Sept. 7, 1984]

§ 1201.123 Special Counsel complaints.

If the Special Counsel determines that any of the actions set out below should be taken, he/she shall file a written complaint setting forth with particularity the supporting facts and any alleged violations of law or regulation.

(a) Action to require an agency to take corrective action (5 U.S.C. 1206(c)(1)(B));

(b) Action to correct a pattern of prohibited personnel practices not otherwise appealable to the Board (5 U.S.C. 1206(g));

(c) Action to discipline an employee (5 U.S.C. 1207); and

(d) Action to discipline an employee under the Federal Employees Flexible and Compressed Work Schedule Act (5 U.S.C. 6101 note).

The Board may order the Special Counsel and the responding party to file briefs and/or memoranda in any action the Special Counsel may bring before the Board.

§ 1201.124 Rights of employees.

When the Special Counsel files a complaint proposing a disciplinary action against an employee under 5 U.S.C. 1206(g), the affected employee shall have the right:

(a) To file an answer, supported by affidavits and documentary evidence;

(b) To be represented;

(c) To a hearing on the record before the Board or an administrative law judge;

(d) To a written decision by the Board, setting forth the reasons for its conclusion, issued at the earliest practicable date; and

(e) A copy of any final order imposing disciplinary actions.

§ 1201.125 Answer.

(a) *Filing and default:* A party named in a Special Counsel complaint shall file an answer with the Secretary of the Board within 30 days of receipt of the complaint. In the absence of good cause shown, a party failing to answer waives the right to contest the allegations in the complaint. Unanswered allegations shall be considered admitted and shall form the basis of an initial or final decision as appropriate.

(b) *Content:* An answer shall contain a specific denial, admission or explanation of each fact alleged in the complaint. If the respondent is without knowledge of a fact, he/she shall so state. Statements of fact and appropriate documentation may be included to support each denial or defense. Allegations unanswered or admitted in the answer shall be considered true and may not be denied later.

§ 1201.126 Final Orders of the Board.

(a) In any action seeking correction of a prohibited personnel practice, the Board may order such corrective actions as it considers appropriate after providing an opportunity for comment by the agency and OPM (5 U.S.C. 1206(c)(1)(B)).

(b) In any action seeking correction of a pattern of prohibited personnel practices not otherwise appealable to the Board, the Board may order an agency or employee to take whatever measures the board may determine to be necessary or appropriate (5 U.S.C. 1206(h)).

(c) In any action to discipline an employee except as provided in paragraphs (e) and (f) of this section, the Board may order a removal, reduction in grade, debarment (not to exceed five years), suspension, reprimand, or an assessment of civil penalty not to exceed $1,000 (5 U.S.C. 1207).

(d) In any action seeking the withholding of Federal funds under 5 U.S.C. 1506(a)(2) in which a State or local employee has engaged in prohibited political activities, the Board may order the Federal agency administering loans or grants to a State or local agency that reappoints the offending employee within a period of 18 months to withhold a sum not to exceed two years' pay of the offending employee at the rate he/she was receiving at the time of the violation.

(e) In any action to discipline an employee under the Federal Employees Flexible and Compressed Work Schedule Act, 5 U.S.C. 6101 Note, a final order of the Board may impose disciplinary action consisting of:

(1) Removal from Federal employment for any period of time the Board may prescribe;

(2) Suspension; or

(3) Such other discipline as the Board shall deem appropriate.

(f) In any action to discipline an employee for violation of 5 U.S.C. 7324, the Board shall order the employee's removal, unless it finds by unanimous vote that the violation does not warrant removal and imposes instead a penalty of not less than 30 days suspension without pay.

[47 FR 936, Jan. 8, 1982]

§ 1201.127 Request for stay.

Under 5 U.S.C. 1208, the Special Counsel may request a Member of the Board to stay any personnel action if he/she determines that there are reasonable grounds to believe that the action was or is about to be taken as a result of a prohibited personnel practice.

(a) *Content of request.* Each request must be signed by the Special Counsel or his/her representative, and must set forth:

(1) The names of the parties;

(2) The agency and officials involved;

(3) The nature of the action to be stayed;

(4) A concise statement of facts justifying the charge that the personnel action was or is to be the result of a prohibited personnel practice; and

(5) The laws or regulations that were or will be violated if the stay is not issued.

(b) *Filing and serving of request.* The request for stay shall be filed and served on all parties in accordance with § 1201.122.

(c) *Action on the request for stay*—(1) *Initial stay.* Within three calendar days after the filing of a request, excluding Saturdays, Sundays and legal holidays any Member of the Board shall grant a request for a stay of 15 calendar days under 5 U.S.C. 1208(a)(1), unless the Member determines that, under the facts and circumstances, the requested stay would not be appropriate. Unless denied within the three-day period, the stay shall be considered granted.

(2) *Extension of initial stay.* Upon request filed by the Special Counsel, any Member of the Board may extend the period of any stay ordered under 5 U.S.C. 1208(a) for a period of not more than 30 days. If the agency involved files with the Board its written views on the granting of the extension of a stay under this provision, the Board, in its discretion, may consider them.

(3) *Indefinite stay.* Upon request of the Special Counsel, the Board may extend any stay granted under 5 U.S.C. 1208(a) for whatever time it considers appropriate, but only after providing to the Special Counsel and the agency an opportunity to comment, and after the Board has concurred in the request of the Special Counsel. Simultaneously with filing a request for an extension of stay under 5 U.S.C. 1208(c), the Special Counsel shall file a brief setting forth the facts and any relevant legal authority that the Board should consider in reaching its determination. The agency shall respond in accordance with any order of the Board.

(d) *Additional information.* At any time, the Board, or a Member of the Board, where appropriate, may require the Special Counsel and/or the agency to appear and present further information or explanation on a request for a stay, to file supplemental briefs or memoranda, or to supply factual information needed by the Board in making a determination regarding a stay.

§ 1201.128 Administrative appeal, judicial review.

No administrative appeal lies from an order of the Board. An employee subject to a final order imposing disciplinary action under 5 U.S.C. 1207 may obtain judicial review of the order of the Board in an appropriate United States Court of Appeals (5 U.S.C. 1207(c)).

§ 1201.129 Special Counsel actions heard by administrative law judge.

(a) Where, at the direction of the Board, an action brought by the Special Counsel is heard by an administrative law judge, the decision shall be a recommended decision to the Board in accordance with U.S.C. 557.

(b) The parties may file with the Office of the Clerk of the Board any exceptions they may have to the recommended decision of the administrative law judge within 30 days after receipt of the decision.

[44 FR 38349, June 29, 1979, as amended at 49 FR 35331, Sept. 7, 1984]

ACTIONS AGAINST ADMINISTRATIVE LAW JUDGES

§ 1201.131 Procedures.

When an agency proposes an action against an administrative law judge, the hearing shall be governed by the procedures established under Subpart B, unless these regulations expressly provide otherwise. However, filing and service shall be made in accordance with § 1201.122 of this subpart.

§ 1201.132 Presiding official.

(a) The presiding official in all cases brought under this section shall be the Board or an administrative law judge designated by the Board.

(b) Where the presiding official is an administrative law judge, the decision shall be a recommended decision to the Board under 5 U.S.C. 557.

§ 1201.133 Board jurisdiction.

Under this section, the jurisdiction of the Board is limited to proposed action involving:

(a) A removal;

(b) A suspension;

(c) A reduction in grade;

(d) A reduction in pay; and

(e) A furlough of 30 days or less.

§ 1201.134 Filing of complaint.

To initiate an action against an administrative law judge, an agency shall file a complaint with the Board setting forth with particularity the facts that support the proposed action.

§ 1201.135 Procedure.

The administrative law judge against whom the complaint is filed may file an answer to the complaint in compliance with § 1201.125 of this subpart.

§ 1201.136 Showing required.

Proposed agency actions under this section shall be sustained only for good cause shown.

REMOVAL FROM THE SENIOR EXECUTIVE SERVICE

§ 1201.141 Right to hearing.

In the case of a proposed action to remove a career appointee from the Senior Executive Service to another civil service position the appointee, upon request, shall be granted an informal hearing before an official appointed by the Board at least 15 days before the effective date of the removal.

§ 1201.142 Hearing procedures; referral of transcript.

The appointee and/or his/her representative may appear and present arguments in an informal hearing before the Board or its designee and a transcript shall be made of the proceeding. The appointee shall not be entitled to any other procedural rights. However, the Board will refer a copy of the record to the Special Counsel, the Board's Office of Merit Studies, the Office of Personnel Management and the employing agency for whatever action may be appropriate.

§ 1201.143 Right to appeal.

There is no right to appeal under 5 U.S.C. 7703. The removal action shall not be delayed as a result of the hearing.

Subpart D—Procedures for Cases Involving Allegations of Discrimination

§ 1201.151 Scope and policy.

(a) *Scope.* (1) The rules in this subpart implement 5 U.S.C. 7702, and apply in any case where an employee or applicant for employment alleges that a personnel action appealable to the Board was taken, in whole or in part, on the basis of prohibited discrimination.

(2) "Prohibited discrimination" as used in this subpart means discrimination prohibited by:

(i) Section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-16(a);

(ii) Section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d));

(iii) Section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791);

(iv) Sections 12 and 15 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 631, 633a); or

(v) Any rule, regulation or policy directive prescribed under any provision of law described in (i) through (iv) above.

(b) *Policy.* It is the policy of the Board to adjudicate impartially, thoroughly and fairly all issues raised under this subpart in the course of an action brought before the Board. In doing so the Board will allow appellants an opportunity to raise allegations of discrimination during the appeals process and to present fully evidence in support of the charges raised.

§ 1201.152 Compliance with procedures under Subpart B.

Except as otherwise expressly provided by this subpart, all actions involving allegations of prohibited discrimination shall comply with the regulations regarding hearing procedures set forth in Subpart B of this part.

§ 1201.153 Contents of petition.

(a) *Contents:* A petition for appeal raising issues of prohibited discrimination under this subpart shall comply with the provisions of § 1201.24 of subpart A with the following exceptions:

(1) The petition shall state that there was discrimination and provide specific examples of how the appellant was discriminated against; and

(2) The petition shall state whether the appellant has filed a discrimination complaint or grievance with his/her agency or any other agency, the date of filing such complaint or grievance, and any action taken.

(b) *Use of form:* Completion of the form in Appendix I to these regulations, including questions 13(a) and (b), shall constitute compliance with the provisions imposed by paragraph (a) of this section.

§ 1201.154 Time for filing petition.

Following are the requirements for filing a petition raising issues of prohibited discrimination:

(a) Where the appellant has filed a timely formal complaint of discrimination with the agency:

(1) A petition must be filed within 20 days after receipt of the agency resolution or final decision on the discrimination issue; or

(2) When the agency has not resolved the matter or issued a final decision on the formal complaint within a 120-day period, the appellant shall nonetheless file an appeal to the Board within a year after the filing of the formal complaint with the agency.

(b) Where the appellant has filed a grievance with the agency under its negotiated grievance procedure, the employee may request the Board to review the final decision under 5 U.S.C. 7702 within 20 days after receipt of the final decision.

(c) Where the appellant has been subject to an action appealable to the board, he/she must either file a timely complaint of discrimination with the agency or appeal to the Board within 20 days after the effective date of the agency action being appealed.

§ 1201.155 Allegations of discrimination not raised in petition.

(a) *Timeliness.* An appellant may raise an allegation of discrimination at any time during the Board's consideration of the appeal of the agency's action, if the appellant did not know of the existence of a basis for the allegation at the time the petition for appeal was filed. The issue of discrimination may be excluded from consideration only upon a showing by the agency that to consider the issue would prejudice the rights of the agency and unduly delay the proceedings or that the discrimination issue is not directly related to the matter being appealed. If the issue of discrimination is excluded from consideration in the appeal, it shall be remanded to the agency for appropriate consideration under any applicable law or regulation.

(b) *Effect.* When an appellant raises an allegation of prohibited discrimination which was not previously raised before the agency, the presiding official shall use his/her authority under § 1201.41 of these regulations, particularly paragraph (b)(8) of § 1201.41, to develop the record sufficiently to make a determination on the merits of the allegation. In developing the record in these circumstances, the time limits that are imposed on the production of evidence and filing of memoranda may reasonably be expected to be much more constricted than those imposed in a 5 U.S.C. 7701 appeal in order to meet the statutory 120-day processing requirement.

(c) *Remand.* In the event the parties agree in writing and file for the record a statement that a remand to the agency is desirable, the presiding official may remand the discrimination issue to the agency for consideration, if the presiding official determines to do so would be in the interests of justice. If the issue is remanded to the agency, the remand order shall contain a time period within which the agency action must be completed, but in no instance shall that time period exceed 120 days. During this time the Board will retain jurisdiction and the adverse action appeal shall be held in abeyance. Thereafter the actions shall be merged and processed and a decision issued within 120 days.

(d) *Agency answer.* When an appellant alleges prohibited discrimination for the first time during the course of a proceeding, and the matter is not remanded to the agency, the agency shall be given a reasonable opportunity to refute the allegation through a responsive pleading, testimony, production of documents or as otherwise permitted by the presiding official.

§ 1201.156 Time for processing appeals involving allegations of discrimination.

(a) *Issue raised in petition.* When an appellant alleges prohibited discrimination in the petition for appeal, the Board shall decide both the issue of discrimination and the appealable action within 120 days of the filing of the appeal.

(b) *Issue not raised in petition.* When an appellant has not alleged prohibited discrimination in the petition for appeal, but has raised the issue subsequently in the proceeding, the Board shall decide both the issue of discrimination and the appealable action within 120 days after the issue is raised.

(c) *Discrimination issue remanded to agency.* When an issue of discrimination is remanded to the agency, processing shall be completed within 120 days after the agency action is completed and the case returned to the Board.

§ 1201.157 Presiding official.

In an appeal from a final decision or order under 5 U.S.C. 7121 or 7122 issued by an arbitrator or the Federal Labor Relations Authority the presiding official shall be an administrative law judge, the Board, or a Member of the Board.

§ 1201.158 Final decision, notice of judicial review.

Any final decision of the Board under 5 U.S.C. 7702 shall notify the appellant of his/her right to petition the Equal Employment Opportunity Commission ("the Commission") to consider the Board's decision, or to file a civil action in an appropriate United States district court within 30 days of the receipt of the Board's final decision.

REVIEW OF BOARD DECISION

§ 1201.161 Action by the Commission, finality and judicial review.

(a) *Time limit for determination.* In cases where an appellant petitions the Commission for consideration of the Board's decision under 5 U.S.C. 7702(b)(2), the Commission shall determine, within 30 days afte the date of petition, whether to consider the Board's decision.

(b) *Judicial review.* The Board's decision shall become judicially reviewable as of:

(1) The date of issuance of the decision if the appellant does not file a petition with the EEOC under 5 U.S.C. 7702(b)(1); or

(2) The date of the Commission's determination not to consider the petition filed under 5 U.S.C. 7702(b)(2).

(c) *Commission processing and time limits.* Where the Commission determines to consider the decision of the Board, within 60 days after making such determination, it shall complete its consideration and either—

(1) Concur in the decision of the Board; or

(2) Issue in writing and forward to the Board for its action under § 1201.162 of this subpart another de-

cision which differs from the decision of the Board to the extent that the Commission finds that, as a matter of law—

(i) The decision of the Board constitutes an incorrect interpretation of any provision of any law, rule, regulation, or policy directive relating to prohibited discrimination; or

(ii) The decision involving such provision is not supported by the evidence in the record as a whole.

(d) *Transmittal of record.* The Board shall transmit a copy of its record to the Commission upon request.

(e) *Development of additional evidence.* When requested by the Commission, the Board shall develop additional evidence necessary to supplement the record within a period sufficient to permit the Commission to make its decision within the statutory 60-day time limit referred to in paragraph (c) of this section. In such event the Board may be required to schedule additional proceedings to enable it to comply with such a Commission request.

(f) *Commission concurrence in Board decision; timing of judicial review.* If the Commission concurs in the decision of the Board under 5 U.S.C. 7702(b)(3)(A), the decision of the Board may be appealed to the appropriate United States district court.

§ 1201.162 Board action on the Commission decision.

(a) *Board decision.* Within 30 days after receipt of a decision of the Commission issued under § 1201.161(c)(2), the Board shall consider the decision and—

(1) Concur and adopt in whole the decision of the Commission; or

(2) To the extent that the Board finds that, as a matter of law:

(i) The Commission decision constitutes an incorrect interpretation of any provision of any civil service law, rule, regulation, policy directive; or

(ii) the Commission decision involving such provision is not supported by the evidence in the record as a whole, it may:

(A) Reaffirm the decision of the Board; or

(B) Reaffirm the decision of the Board with such revisions as it determines appropriate.

(b) *Judicial review.* If the Board concurs in or adopts the decision of the Commission under paragraph (a)(1) of this section the decision of the Board shall be a judicially reviewable action.

§ 1201.165 Mixed cases governed by Reorganization Plan No. 1 of 1978.

(a) *Definitions*—(1) *Prohibited discrimination* as used in this section means discrimination prohibited by section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-16(c)); section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791); and sections 12 and 15 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 631, 633a).

(2) *Initial decision* as used in this section means decision on an appeal rendered by a presiding official of the MSPB pursuant to 29 CFR 1613 or 5 CFR Part 772 (as in effect prior to January 11, 1979) in which issues of prohibited discrimination have been raised.

(3) *Preliminary decision as used in this section means:* (i) An initial decision within the meaning of § 1201.165(a)(2) which has not been reopened by a Board member or as to which no petition to reopen was filed by a party within 35 days after issuance of the decision.

(ii) A decision by the Board itself pursuant to 29 CFR Part 1613 or 5 CFR Part 772, in which issues of prohibited discrimination are addressed, or a decision by the Board denying all petitions to reopen.

(b) *Contents of petition.* A petition for appeal raising issues of prohibited discrimination shall state there was discrimination and provide specific examples of how the appellant was discriminated against.

(c) *Procedures.* (1) Appeals under 29 CFR Part 1613 (43 FR 60901, formerly 5 CFR Part 713) shall be processed by the Board consistent with the provisions set forth in that part. Such appeals shall be filed in writing with the appropriate Board Field Office.

(2) Appeals under the procedures of 5 CFR Part 772, shall be processed as provided therein, except that under 5 CFR 772.306(b) the discrimination investigation shall be completed and the investigative file and report sent to the Board, within 120 days. Except when this time has been extended upon a verified showing of good cause, the Board may impose the sanctions provided in 5 CFR 1201.43 if an agency fails to timely complete and file the result of such an investigation.

(3) An initial decision on an appeal which includes issues of prohibited personnel discrimination shall be rendered by an employee of the Board, pursuant to 29 CFR 1613 or 5 CFR Part 772, on all issues raised in the appeal.

(4) Unless a petition to reopen is filed with the Board or unless a Board member reopens on his/her own motion, within 35 days from issuance of an initial decision, the initial decision shall become the preliminary decision of the Board.

(d) *Review by EEOC*—(1) *Time for filing.* A petition to review the preliminary decision of the Board on issues of prohibited discrimination shall be filed with the EEOC within 35 days after the initial decision of the Board becomes the preliminary decision.

(2) *Petition filed.* In the event a petition for review is filed with the EEOC, the Board decision shall become final on all issues, other than issues of prohibited discrimination, on the date EEOC's decision on these issues becomes final.

(3) *Petition not filed.* If a petition for review is not filed with the EEOC the decision of the Board shall become final on all issues.

(5 U.S.C. 1205(g))

[44 FR 50540, Aug. 28, 1979]

SPECIAL PANEL

§ 1201.171 Referral of case to Special Panel.

If the Merit Systems Protection Board (Board) reaffirms its decision under 5 CFR 1201.162(a)(2) with or without modification, the matter shall be immediately certified to the Special Panel established pursuant to 5 U.S.C. 7702(d). Upon certification, the Board shall, within five days (excluding Saturdays, Sundays, and Federal holidays), transmit to the Chairman of the Special Panel and to the Equal Employment Opportunity Commission (EEOC) the administrative record in the proceeding including—

(a) The factual record compiled under this section which shall include a transcript of any hearing(s);

(b) The decisions issued by the Board and the Commission under 5 U.S.C. 7702; and

(c) A transcript of oral arguments made, or legal brief(s) filed, before the Board and/or the Commission.

[50 FR 52897, Dec. 27, 1985]

§ 1201.172 Organization of the Special Panel.

(a) The Special Panel is composed of—

(1) A Chairman appointed by the President with the advice and consent of the Senate, and whose term is six (6) years;

(2) One member of the MSPB, designated by the Chairman of the Board each time a panel is convened;

(3) One member of the EEOC designated by the Chairman of the Commission each time a panel is convened.

(b) *Designation of Special Panel member*—(1) Time of designation. Within five days of certification of the case to the Special Panel, the Chairman of the MSPB and the Chairman of the EEOC shall each designate one member from their respective agencies to serve on the Special Panel.

(2) *Manner of designation.* Letters of designation shall be served on the Chairman of the Special Panel and the parties to the appeal.

[50 FR 52897, Dec. 27, 1985]

§ 1201.173 Practices and procedures of the Special Panel.

(a) *Scope.* The rules in this subpart apply to proceedings before the Special Panel.

(b) *Suspension of rules.* In the interest of expediting a decision, or for good cause shown, the Chairman of the Special Panel may, except where the rule is required by statute, suspend these rules on application of a party, or on his or her own motion, and may order proceedings in accordance with his or her direction.

(c) *Time limit for proceedings.* Pursuant to 5 U.S.C. 7702(d)(2)(A), the Special Panel shall issue a decision within 45 days after a matter has been certified to it.

(d) *Administrative assistance to Special Panel.* (1) The MSPB and the EEOC shall provide the Panel with such reasonable and necessary administrative resources as determined by the Chairman of the Special Panel.

(2) Assistance shall include, but is not limited to, processing vouchers for pay and travel expenses.

(3) The Board and the EEOC shall be responsible for all administrative costs incurred by the Special Panel and, to the extent practicable, shall equally divide the costs of providing such administrative assistance. The Chairman of the Special Panel shall resolve the manner in which costs are divided in the event of a disagreement between the Board and the EEOC.

(e) *Maintenance of the official record.* The Board shall maintain the official record. The Board shall transmit two copies of each submission filed to each member of the Special Panel in an expeditious manner.

(f) *Filing and service of pleadings.* (1) The parties shall file the original and six copies of all submissions with the Clerk, Merit Systems Protection Board, 1120 Vermont Avenue , NW, Washington, DC 20419. One copy of each submission shall be served on the other parties.

(2) A certificate of service specifying how and when service was made must accompany all submissions of the parties.

(3) Service may be by mail or by personal delivery during normal business hours (8:30 a.m.—5:00 p.m.). Due to the short statutory time limit, parties are required to file their submissions by overnight Express Mail, provided by the U.S. Postal Service, should they file by mail.

(4) The date of filing shall be determined by the date of mailing as indicated by the order date for Express Mail. If the filing is by personal delivery, it shall be considered filed on the date it is received in the office of the Clerk, Merit Systems Protection Board.

(g) *Briefs and responsive pleadings.* If the parties wish to submit written argument, briefs shall be filed with the Special Panel within fifteen (15) days from the date of the Board's certification order. Due to the short statutory time limit responsive pleadings will not ordinarily be permitted.

(h) *Oral argument.* The parties have the right to oral argument if desired. Parties wishing to exercise this right shall so indicate at the time of filing their brief, or if no brief is filed, within fifteen (15) days from the date of the Board's certification order. Upon receipt of a request for argument the Chairman of the Special Panel shall determine the time and place for argument and the time to be allowed each side, and shall so notify the parties.

(i) *Postargument submissions.* Due to the short statutory time limit, no postargument submissions will be permitted, except by order of the Chairman of the Special Panel.

(j) *Procedural matters.* Any procedural matters not addressed in these regulations shall be resolved by written order of the Chairman of the Special Panel.

[50 FR 52897, Dec. 27, 1985]

§ 1201.174 Enforcement of Special Panel decision.

The Board shall, upon receipt of the decision of the Special Panel, order the agency concerned to take any action appropriate to carry out the decision of the Panel. The Board's regulations regarding enforcement of a final order of the Board shall apply. These regulations are set out at 5 CFR Part 1201, Subpart E.

[50 FR 52897, Dec. 27, 1985]

§ 1201.175 Judicial review of cases decided under 5 U.S.C. 7702.

(a) *Place and type of review.* All judicial review from cases decided under 5 U.S.C. 7702 is in the appropriate United States district court, including: An action pursuant to the provisions of section 717(c) of the Civil Rights Act of 1964, as amended (42 U.S.C.

2000e-16(c)); section 15(c) of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 633a(c)); and section 15(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216(b)).

(b) *Time for filing.* Notwithstanding any other provision of law, all cases decided under 5 U.S.C. 7702 must be filed within 30 days after the individual received notice of the judicially reviewable action.

[44 FR 38349, June 29, 1979. Redesignated at 50 FR 52897, Dec. 27, 1985]

Subpart E—Enforcement of Final Order

§ 1201.181 Petition for enforcement.

(a) *Appellate jurisdiction.* Any party may petition the Board for enforcement of a final decision issued under the Board's appellate jurisdiction. Submission of this petition shall be made to the regional office which rendered the initial decision. The petition shall specifically set forth the reasons why the petitioning party believes there is noncompliance.

(b) *Original jurisdiction.* Any party seeking enforcement of a Board order issued under its original jurisdiction shall submit a petition for enforcement to the Office of the Clerk of the Board. The petition shall specifically set forth the reasons why the petitioning party believes there is noncompliance. Processing of the petition will be made under the procedures set forth in § 1201.184 of this subpart.

[44 FR 38349, June 29, 1979, as amended at 46 FR 42437, Aug. 21, 1981; 49 FR 35331, Sept. 7, 1984]

§ 1201.182 Compliance.

The Chief Appeals Officer shall take all necessary action to ascertain whether the final decision of the Board is being complied with and shall issue an opinion on the matter. If the Regional Director finds noncompliance, he/she shall undertake efforts to obtain compliance.

[44 FR 38349, June 29, 1979, as amended at 46 FR 42437, Aug. 21, 1981]

§ 1201.183 Referral to the Board.

Where the Regional Director is unable to obtain satisfactory agency compliance with the final order, he/she shall submit the record of the case to the Board with appropriate findings and recommendations for enforcement.

[44 FR 38349, June 29, 1979, as amended at 46 FR 42437, Aug. 21, 1981]

§ 1201.184 Enforcement action by Board.

(a) *Notice to show cause.* The Board may issue a notice to any Federal employee who has failed to comply with an order to show cause why there was noncompliance. Such notice may require the employee or his/her representative to appear before the Board and/or to respond to the notice in writing.

(b) *Hearing.* If the Board determines to hold a hearing on a notice to show cause, it shall be on the record.

(c) *Certification to the Comptroller General.* Where appropriate, the Board may, under 5 U.S.C. 1205(d)(2), certify to the Comptroller General of the United States that no payment shall be made to any employee failing to comply with the Board's order, other than a Presidential appointee subject to confirmation by the Senate.

(d) *Effect of Special Counsel's action or failure to act.* No proceeding under this subpart shall be precluded because the Special Counsel did not file a complaint under 5 U.S.C. 1206(g)(1)(B) and subpart C of this part.

Subpart F—Saving Provisions

§ 1201.191 Saving provisions.

(a) *Scope.* All executive orders, rules and regulations relating to the Federal service that were in effect prior to the effective date of the Act shall continue in effect and be applied by the Board in its adjudications until modified, terminated, superseded, or repealed by the President, Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority, as appropriate.

(b) *Administrative proceedings and appeals therefrom.* No provision of the Civil Service Reform Act shall be applied by the Board in such a way as to affect any administrative proceeding pending at the effective date of such provision. "Pending" is considered to encompass existing agency proceedings, and appeals before the Board or its predecessor agencies, that were subject to judicial review or under judicial review on January 11, 1979, the date on which the Act became effective. An agency proceeding is considered to exist once the employee has received notice of the proposed action.

(c) *Explanation.* Mr. X was advised of agency Y's intention to remove him for abandonment of position, effective December 29, 1978. Twenty days later Mr. X appealed the agency action to the Merit Systems Protection Board. The Merit Systems Protection Board docketed Mr. X's appeal as an "old system case", *i.e.*, one to which the savings clause applied. The appropriate regional office processed the case, applying the substantive laws, rules and regulations in existence prior to the enactment of Act. The decision, dated February 28, 1979, informed Mr. X that he is entitled to judicial review if he files a timely notice of appeal in the appropriate United States district court or the United States Court of Claims under the statute of limitations applicable when the adverse action was taken.

[44 FR 38349, June 29, 1979, as amended at 46 FR 42437, Aug. 21, 1981]

Subpart G—Voluntary Expedited Appeals Procedure

AUTHORITY: 5 U.S.C. 7701(j).

SOURCE: 50 FR 18222, Apr. 30, 1985, unless otherwise noted.

GENERAL

§ 1201.200 Scope and policy.

The rules in this subpart apply to the voluntary expedited appeals procedure (VEAP) of the Board. It is the objective of the Board to establish a simplified alternative dispute resolution procedure which will provide employees and agencies with a faster, less costly process than Subpart B procedures to resolve appealed actions, while also assuring an impartial third-party forum with full concern for fairness and the rights of all parties.

ELECTION OF AND FILING FOR VOLUNTARY EXPEDITED APPEALS PROCEDURE

§ 1201.201 Election of voluntary expedited appeals procedure.

(a) The appellant may request that his/her case be processed under the voluntary expedited appeals procedure at the time of filing a petition for appeal. In the event the appellant has not elected VEAP at the time of filing, appellant will be allowed 10 days from the date of the Board's acknowledgment order to elect the alternate procedure. Such election must be in writing. The date of filing shall be determined by the date of mailing indicated by the postmark date.

(b) If an appellant elects VEAP in the petition for appeal, notice of that election will be served on the agency in the Board's order of acknowledgment. If an appellant elects VEAP during the 10-day period following the acknowledgment order, the Board will notify the agency of that election. Within 15 days from the date of the Board's order, the agency will file either a consent to use the voluntary expedited process and a designation of representative form or a declination. Included in the consent will be a brief summary of facts and legal issues raised in the appeal. In the event the agency declines to use the expedited process, it must timely file its response to the petition for appeal in accordance with § 1201.25 and note its declination of the process.

(c) The regional director or designee of the MSPB office having jurisdiction over the appeal retains final discretion to process the case under the voluntary expedited appeals procedure or the formal MSPB procedure. Such decision will be made after receipt of the agency's consent and summary of the case. The regional director or designee also retains the right to convert the case to adjudication under Subpart B procedures in the event circumstances warrant, such as whenever it appears that discovery is required, novel questions of law are raised at the hearing or in briefs, or issues arise that do not lend themselves to resolution in an expedited process.

§ 1201.202 Filing of request for the voluntary expedited appeals procedure; contents; time limits.

(a) The filing, time limits and content requirements of the petition for appeal processed under this subpart shall comply with the provisions of §§ 1201.22-1201.26 of Subpart B, unless these regulations expressly provide otherwise.

(b) Within 15 days from the date of the Board's order of acknowledgment, the agency will file a designation of representative and consent form, including a summary of facts and legal issues raised in the case or decline to use the process.

§ 1201.203 Joint appeals record.

(a) Within 30 days from the date of the Board's order of acknowledgment, the parties will file a Joint Appeals Record including, but not limited to:

(1) Each Party's statement of issues;

(2) Each Party's statement of position with respect to those issues limited to three pages;

(3) Requests for hearing;

(4) Witness lists, including a statement of the anticipated testimony of each witness;

(5) Any objections to the appearance of any witness requested by the opposing party;

(6) The agency response required by § 1201.25; and

(7) Two dates, mutually agreed upon by the parties for the hearing, no later than 15 days beyond the day the Joint Appeals Record is to be received by the Regional Office.

(b) The parties must submit all known relevant material in the Joint Appeals Record. Evidence may not be submitted at the hearing unless the presiding official determines that good cause is shown for the late submission.

§ 1201.204 Procedures for cases involving allegations of discrimination.

The provisions for the processing of cases involving discrimination are not abridged by the use of the voluntary expedited appeals procedure. Section 1201.152, however, does not apply to the adjudication of cases involving allegations of discrimination if they are processed under VEAP.

PRESIDING OFFICIAL AND HEARING

§ 1201.205 Selection and authority of presiding official.

(a) The regional director will appoint the presiding official taking due account of scheduling difficulties, workload requirements or conflicts of interest.

(b) The presiding official shall have the authority to rule on parties' procedural requests. However, the presiding official shall issue the expedited initial decision no later than 60 days from the date of the Board's order of acknowledgment.

(c) The presiding official shall have the authority to take all necessary action to avoid delay in the disposition of the proceeding and to conduct a fair and impartial hearing including the authority to regulate the hearing, maintain decorum and exclude from the hearing any disruptive person.

(d) Unless these regulations expressly provide otherwise, the presiding official will follow the regulations under 5 CFR Part 1201, Subpart B.

§ 1201.206 Hearing.

(a) If the appellant requests a hearing, or if the presiding official approves any agency request for a hearing, the hearing will be scheduled no later than 15 days following the due date or receipt of the Joint Appeals Record, whichever is earlier.

(b) The hearing will be informal. Election of VEAP constitutes a waiver by the parties of a verbatim record.

(c) The hearing will be held at the employment site.

PARTIES AND WITNESSES.

§ 1201.207 Witnesses.

Every Federal agency will make its employees available to furnish sworn statements or to appear as witnesses at the hearing when requested by the presiding official. Witnesses are on official duty status when providing such statements or testimony.

§ 1201.208 Intervenors.

(a) The Director of the Office of Personnel Management may intervene as a matter of right pursuant to 5 U.S.C. 7701(d)(1). Such intervention shall be made at the earliest practicable time.

(b) The Special Counsel may intervene as a matter of right pursuant to 5 U.S.C. 1206(i). Such intervention shall be made at the earliest practicable time.

EVIDENCE

§ 1201.209 Service of documents.

Any documents submitted to the presiding official shall be served upon all parties to the proceeding.

§ 1201.210 Admissibility.

Formal rules as to admissibility of evidence will not be applied although they will be used as guidance for the conduct of the proceeding. Rules of procedure shall be liberally construed to facilitate full and frank disclosure by both parties. Parties have the duty of including all known relevant materials in their submissions.

§ 1201.211 Production of evidence or witnesses by request of presiding official.

The presiding official may request the production of information or witnesses if he or she has a reasonable basis to believe that it will be germane to the case.

§ 1201.212 Stipulations.

The parties may stipulate to any matter of fact.

§ 1201.213 Official notice.

The presiding official, on his or her own motion or on motion of a party, may take official notice of matters of common knowledge or matters that can be verified. Official notice taken of any fact satisfies a party's burden of providing the fact noticed.

SANCTIONS

§ 1201.214 Sanctions.

The presiding official may impose sanctions upon the parties as necessary to serve the ends of justice, including but not limited to the instances set forth in paragraphs (a), (b), and (c) of this section.

(a) *Failure to comply with a request.* If a party fails to comply with a presiding official's request for information or witnesses within the party's control which the presiding official believes to be necessary to resolve the issues, or a party fails to cooperate or act in good faith, the presiding official may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit the party failing to comply with such request from introducing evidence concerning or otherwise relying upon testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; or

(4) Strike any part of the submissions of the party failing to comply with such request dealing with the subject matter of the request.

(b) *Failure to prosecute or defend.* If a party fails to prosecute or defend an appeal, the presiding official may dismiss the action with prejudice or rule for the appellant.

(c) *Failure to make timely filing.* The presiding offical may refuse to consider any information which is not filed in a timely fashion in compliance with this subpart or with his or her request.

HEARING PROCEDURE; SETTLEMENT; EXPEDITED INITIAL DECISION

§ 1201.215 Burden of proof.

Section 1201.56 of Subpart B applies.

§ 1201.216 Closing the record.

(a) When a hearing is convened, the record will close at the conclusion of the hearing unless otherwise specified by the presiding official.

(b) When a hearing is not convened, the record will close on the date set by the presiding official as the final date for the receipt of submissions of the parties.

(c) In any event, the record will be closed no later than 15 days from the due date of the Joint Appeals Record.

(d) Once the record is closed, no additional evidence or argument will be accepted unless, in the presiding official's discretion, he or she determines that the party seeking such admission has shown that new and material evidence has become available which was not readily available prior to the closing of the record.

§ 1201.217 Settlement.

(a) *Settlement discussion.* Informal settlement of the dispute will be raised by the presiding official with the parties prior to the hearing or, if no hearing is requested, within 15 days after the filing of the Joint Appeals Record. Prohibitions against ex parte communications during settlement discussions will be waived by the parties. If either party does not wish to discuss settlement or the matter cannot be settled informally, the presiding official will proceed with the adjudication of the case. At any time until the issuance of an expedited initial decision the parties may enter into a settlement agreement.

(b) *Agreement.* If the parties agree to resolve the dispute without a decision on the merits of the case, upon notification to the presiding official, the settlement agreement will be the final and binding resolution of the appeal and the presiding official will dismiss the appeal with prejudice.

(1) If the agreement is offered into the record by the parties and reviewed by the presiding official for legality and lack of fraud, it will be made a part of the record, and the Board will retain jurisdiction to ensure compliance with the agreement;

(2) If the agreement is not entered into the record, the Board will not retain jurisdiction to ensure compliance.

§ 1201.218 Expedited initial decision.

(a) If settlement is not reached, the presiding official will adjudicate the appeal and issue a written decision within 15 days after the record is closed but no later than 60 days from the date of the Board's order of acknowledgment. The decision will include a summary of the basic issues, findings of fact and conclusions of law, a holding affirming, reversing or modifying the appealed action and order appropriate relief.

(b) Expedited initial decisions are not precedential.

(c) This expedited initial decision will become final after 35 days and is binding upon the parties if no petition for review is filed or the Board does not reopen on its own motion pursuant to § 1201.117.

PETITIONS FOR REVIEW

§ 1201.219 Petitions for review.

(a) Any party may file a petition for review with the Board of the expedited initial decision before it becomes final.

(b) Petitions for review must be filed within 35 days from the date of the decision. Supportive briefs must accompany the petitions for review and be limited to 15 pages. Opposition briefs must be received by the Board within 15 days from the date of the Board's forwarding of a copy of the petition for review to the opposing party and be limited to 10 pages. The record shall close at the time the brief in opposition is scheduled to be received by the Board.

§ 1201.220 Standard of review.

Section 1201.115 of Subpart B shall apply.

§ 1201.221 Final decision.

The Board will issue a final decision no later than 35 days from the date the file is certified as complete for review.

§ 1201.222 Judicial review.

Any employee or applicant for employment adversely affected by a final order or decision of the Board may obtain judicial review under the provisions of 5 U.S.C. 7703.

UNITED STATES MERIT SYSTEMS PROTECTION BOARD

APPEAL

AGENCY USE ONLY

INSTRUCTIONS:

THE PURPOSE OF THIS FORM IS TO HELP YOU PROVIDE IMPORTANT INFORMATION TO THE U.S. MERIT SYSTEMS PROTECTION BOARD ("THE BOARD") WHEN YOU FILE AN APPEAL. YOU ARE NOT REQUIRED TO USE THIS FORM, AND YOU ARE NOT LIMITED TO ANSWERING THE QUESTIONS ON THE FORM IF YOU FEEL THERE IS OTHER INFORMATION YOU WISH TO PROVIDE. HOWEVER, IF YOU DO NOT USE THE FORM, YOUR APPEAL DOCUMENTS MUST COMPLY WITH THE BOARD'S REGULATIONS. YOUR AGENCY'S PERSONNEL OFFICE WILL PROVIDE YOU WITH A COPY OF THESE REGULATIONS AND THE BOARD ADVISES YOU TO REVIEW THEM.

ALL APPEALS FILED BEFORE AGENCY ACTION HAS BEEN TAKEN WILL BE CONSIDERED PREMATURE AND WILL BE RETURNED WITHOUT ACTION.

ALL APPELLANTS WHO ELECT TO USE THIS FORM SHOULD COMPLETE PARTS I THROUGH IV. ONLY THOSE WHO ARE APPEALING REDUCTION-IN-FORCE (RIF) ACTIONS ARE REQUIRED TO COMPLETE PART V. THE INFORMATION MUST BE TYPED OR PRINTED CLEARLY. ANSWER ALL QUESTIONS AND USE "N/A" WHEN THE QUESTION IS NOT APPLICABLE TO YOUR APPEAL. ALL APPELLANTS MUST SIGN AND DATE THE FORM IN THE SPACE PROVIDED AT THE END OF PAGE 4 FOR IT TO BE ACCEPTED BY THE BOARD, AND TO INDICATE APPROVAL OF THE CONTENTS OF THE ENTIRE FORM.

YOU MAY SUPPLEMENT YOUR RESPONSE TO ANY QUESTION IN THE SPACE PROVIDED ON PAGE 4 OR, IF NEEDED, ON SEPARATE SHEETS OF PAPER. IF SEPARATE SHEETS ARE USED, PLEASE PUT YOUR NAME AND SOCIAL SECURITY NUMBER AT THE TOP OF EACH PAGE. INDICATE BY NUMBER WHICH QUESTION YOU ARE ANSWERING, AND ATTACH THE EXTRA PAGES TO THE FORM.

WHERE TO FILE—YOU OR YOUR REPRESENTATIVE ARE REQUIRED TO FILE ONE ORIGINAL AND ONE COPY OF THIS FORM, TOGETHER WITH ITS ATTACHMENTS, WITH THE BOARD'S REGIONAL OFFICE IDENTIFIED IN THE DECISION NOTICE PROVIDED BY THE AGENCY. FILING MUST BE MADE EITHER BY PERSONAL DELIVERY DURING NORMAL BUSINESS HOURS TO THE APPROPRIATE BOARD REGIONAL OFFICE OR BY MAIL ADDRESSED TO THAT OFFICE. THE BOARD RECOMMENDS BUT DOES NOT REQUIRE THAT YOU USE CERTIFIED MAIL.

PRIVACY ACT STATEMENT

This form requests personal information which is relevant and necessary to reach a decision in your appeal. The U.S. Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Since your appeal is a voluntary action you are not required to provide any personal information in connection with it. However, failure to supply the U.S. Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.

You should know that the decisions of the U.S. Merit Systems Protection Board on appeal are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in your appeal file may be released as required by the Freedom of Information Act. Some information about your appeal will also be used in depersonalized form as a data base for program statistics.

PART I. APPELLANT IDENTIFICATION

1. NAME *(Last, first, middle)*	2. SOCIAL SECURITY NUMBER
3. PRESENT ADDRESS *(Number and street, city, state, and ZIP code).* YOU ARE REQUIRED TO NOTIFY THE BOARD OF ANY ADDRESS CHANGE IN ORDER TO INSURE THE CORRECT DELIVERY OF A DECISION.	4. HOME PHONE *(Include area code)*
	5. OFFICE PHONE *(Include area code)*

PART II. APPEALED ACTION

6. BRIEFLY DESCRIBE THE *AGENCY ACTION* YOU WISH TO APPEAL AND ATTACH ANY RELEVANT DOCUMENTS *(e.g., a Notice of Proposed Action, a Form 50, or Agency Appeal Decision)*

7. NAME AND ADDRESS OF ACTING AGENCY *(Including Bureau, or other Division as well as street address, city, state, and ZIP code)*	8. APPELLANT'S POSITION TITLE AT TIME OF ACTION	
	9. GRADE AT TIME OF ACTION	10. SALARY AT TIME OF ACTION $ PER

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Previous Edition Not Usable

50283-102

Optional Form 283 (Rev. 11-84)
Merit Systems Protection Board
5 CFR 1201

11. ARE YOU A VETERAN OR ENTITLED TO THE EMPLOYMENT RIGHTS OF A VETERAN? ☐ YES ☐ NO	12. EMPLOYMENT STATUS ☐ Temporary ☐ Applicant ☐ Retired ☐ Permanent ☐ Term	13. IF RETIRED, DATE OF RETIREMENT *(Month, day, year)*

14. TYPE OF SERVICE ☐ Competitive ☐ Excepted	15. LENGTH OF GOVERNMENT SERVICE	16. LENGTH OF SERVICE WITH ACTING AGENCY	17. WERE YOU SERVING A PROBATIONARY OR TRIAL PERIOD AT THE TIME ACTION WAS TAKEN BY THE AGENCY? ☐ YES ☐ NO

18. DATE WRITTEN PROPOSED ACTION NOTICE RECEIVED *(Month, day, year) (Attach copy)*	19. DATE FINAL DECISION NOTICE RECEIVED *(Month, day, year) (Attach Copy)*	20. EFFECTIVE DATE OF ACTION *(Month, day, year)*

21. WHY DO YOU THINK THE AGENCY WAS WRONG IN TAKING THIS ACTION? *(Explain briefly)*

22. WHAT ACTION WOULD YOU LIKE THE BOARD TO TAKE ON THIS CASE?

23. IF YOU BELIEVE YOU WERE DISCRIMINATED AGAINST BY THE AGENCY BECAUSE OF EITHER YOUR RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, MARITAL STATUS, POLITICAL AFFILIATION, HANDICAPPING CONDITION, OR AGE, INDICATE SO AND EXPLAIN WHY YOU BELIEVE IT TO BE TRUE. YOU MUST INDICATE, BY EXAMPLES, HOW YOU WERE DISCRIMINATED AGAINST.

24. HAVE YOU FILED A FORMAL DISCRIMINATION COMPLAINT CONCERNING THE MATTER WHICH YOU ARE SEEKING TO APPEAL WITH YOUR AGENCY OR ANY OTHER AGENCY?

☐ YES *(Attach copy)* ☐ NO

24A. IF YES, DATE FILED *(Month, day, year)*	24B. PLACE FILED *(Agency and location)*	24C. HAS THERE BEEN A DECISION? ☐ YES *(Attach copy)* ☐ NO

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25. HAVE YOU, OR ANYONE IN YOUR BEHALF, FILED A FORMAL GRIEVANCE WITH YOUR AGENCY CONCERNING THIS MATTTER, UNDER A NEGOTIATED GRIEVANCE PROCEDURE PROVIDED BY A COLLECTIVE BARGAINING AGREEMENT?

☐ YES *(Attach copy)* ☐ NO

25A. IF YES, DATE FILED *(Month, day, year)*	25B. PLACE FILED *(Agency and location)*	25C. HAS DECISION BEEN ISSUED? ☐ YES *(Attach copy)* ☐ NO
25D. IF YES, DATE FILED *(Month, day, year)*	25E. NAME OF ISSUING OFFICIAL	25F. TITLE OF ISSUING OFFICIAL

PART III. HEARING

26. YOU HAVE A RIGHT TO A HEARING ON THIS APPEAL. IF YOU DO NOT WANT A HEARING, THE BOARD WILL MAKE ITS DECISION ON THE BASIS OF THE DOCUMENTS YOU AND THE AGENCY SUBMIT. IF NO SQUARE IS CHECKED, THE BOARD WILL PRESUME YOU ARE WAIVING A HEARING. *DO YOU WANT A HEARING?*

☐ YES ☐ NO

IF YOU CHOOSE TO HAVE A HEARING THE BOARD WILL NOTIFY YOU WHEN AND WHERE IT IS TO BE HELD.

PART IV. DESIGNATION OF REPRESENTATIVE

27. YOU HAVE THE RIGHT TO DESIGNATE SOMEONE TO REPRESENT YOU ON THIS APPEAL. IF HE/SHE AGREES TO DO SO, THIS PERSON DOES NOT HAVE TO BE AN ATTORNEY. THE AGENCY HAS A RIGHT TO CHALLENGE YOUR CHOICE OF A REPRESENTATIVE IF THERE IS A CONFLICT OF INTEREST OR POSITION. YOU MAY CHANGE YOUR DESIGNATION OF A REPRESENTATIVE AT A LATER DATE, IF YOU SO DESIRE, BUT MUST NOTIFY THE BOARD PROMPTLY OF ANY CHANGE.

27A.

▶ "I HEREBY DESIGNATE ____________________________ TO SERVE AS MY REPRESENTATIVE DURING THE COURSE OF THIS APPEAL. I UNDERSTAND THAT MY REPRESENTATIVE IS AUTHORIZED TO ACT ON MY BEHALF."

27B. REPRESENTATIVE'S ADDRESS AND PHONE NUMBER	27C. REPRESENTATIVE'S SIGNATURE	27D. DATE
	27E. REPRESENTATIVE'S EMPLOYER	

PART V. REDUCTION-IN-FORCE (RIF)

INSTRUCTIONS: FILL OUT THIS PART ONLY IF YOU ARE APPEALING FROM A REDUCTION-IN-FORCE (RIF). YOUR AGENCY'S PERSONNEL OFFICE CAN FURNISH YOU MOST OF THE INFORMATION REQUESTED BELOW.

28. RETENTION GROUP OR SUB-GROUP	29. SERVICE COMPUTATION DATE	30. HAS YOUR AGENCY OFFERED YOU ANOTHER POSITION RATHER THAN SEPARATING YOU? ☐ YES ☐ NO
31. TITLE OF POSITION OFFERED	32. GRADE OF POSITION OFFERED	33. SALARY OF POSITION OFFERED $ PER

34. LOCATION OF POSITION OFFERED	35. DID YOU ACCEPT THIS POSITION? ☐ YES ☐ NO

36. EXPLAIN WHY YOU BELIEVE YOU SHOULD NOT HAVE BEEN AFFECTED BY THE REDUCTION-IN-FORCE *(Explanations could include: You were placed in the wrong retention group or subgroup; an error was made in the computation of your service computation date; competitive area was too narrow; improperly reached for separation from competitive level; an exception was made to the regular order of selection; full 30-day notice was not given; you believe you can "bump" a person in a lower retention group or subgroup; or any other reasons. Please provide as much information as possible regarding each reason.)*

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Page 3

37. SUPPLEMENTAL ANSWER SPACE

ATTENTION—THIS APPEAL MUST BE SIGNED

I CERTIFY that all of the statements made in this Appeal are true, complete, and correct to the best of my knowledge and belief.	SIGNATURE OF APPELLANT	DATE SIGNED

★ U.S. GOVERNMENT PRINTING OFFICE : 1984 O - 461-275 (337)

Optional Form 283 (Rev. 11-84)
Page 4

[50 FR 13174, Apr. 3, 1985]

APPENDIX I-A

UNITED STATES MERIT SYSTEMS PROTECTION BOARD

APPEAL

AGENCY USE ONLY

INSTRUCTIONS: The purpose of this form is to help you provide valuable information to the U.S. Merit Systems Protection Board ("The Board") when you file an appeal. You are not required to use this form, and you are not limited to answering the questions on the form if you feel there is other information you wish to provide. However, if you do not use the form, your appeal documents must comply with the Board's regulations. Your agency's personnel office will provide you with a copy of these regulations upon request and the Board advises you to review them.

All appellants who elect to use this form should complete Parts I through III. Only those who are appealing Reduction-in-Force (RIF) actions are required to complete Part IV. ALL APPELLANTS should also sign and date the form in the space provided at the end of Page 4 indicating approval of the contents of the entire form.

In filling out this form, wherever the space provided is insufficient you may add additional pages. If you do so, please put your name and Social Security Number at the top of the page, and indicate by number which question you are answering.

WHERE TO FILE—You or your representative are required to file one original and three copies of this form, together with its attachments with the Board's field office identified in the decision notice provided by the Agency. Filing must be made either by personal delivery during normal business hours to the appropriate Board field office or by mail addressed to that office. The Board recommends but does not require that you use certified mail.

PRIVACY ACT STATEMENT

This form requests personal information which is relevant and necessary to reach a decision in your appeal. The U.S. Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Since your appeal is a voluntary action you are not required to provide any personal information in connection with it. However, failure to supply the U.S. Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.

You should know that the decisions of the U.S. Merit Systems Protection Board on appeal are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in your appeal file may be released as required by the Freedom of Information Act. Some information about your appeal will also be used in depersonalized form as a data base for program statistics.

PART I. APPELLANT IDENTIFICATION

1. NAME *(Last, first, middle)*

2. SOCIAL SECURITY NUMBER

3. PRESENT ADDRESS *(Number and street, city, state, and ZIP code)*

4. HOME PHONE *(Include area code)*

5. OFFICE PHONE *(Include area code)*

PART II. APPEALED ACTION

6. BRIEFLY DESCRIBE *AGENCY ACTION* YOU WISH TO APPEAL AND ATTACH ANY RELEVANT DOCUMENTS

6A. VOLUNTARY EXPEDITED APPEALS PROCEDURE. FOR A MATTER APPEALABLE TO THE BOARD, ANY APPELLANT MAY ELECT THE VOLUNTARY EXPEDITED APPEALS PROCEDURE AS AN ALTERNATIVE TO THE FORMAL MSPB APPEALS PROCESS. (A detailed explanation of the Voluntary Expedited Appeals Procedure is attached to this form.) PLEASE CHECK ONE OF THE BOXES BELOW.

☐ YES, I ELECT THE VOLUNTARY EXPEDITED APPEALS PROCEDURE

☐ NO, I DO NOT ELECT THE VOLUNTARY EXPEDITED APPEALS PROCEDURE

7. NAME AND ADDRESS OF ACTING AGENCY *(Including Bureau, or other Division as well as street address, city, state, and ZIP code)*

8. APPELLANT'S POSITION TITLE AT TIME OF ACTION

9. GRADE AT TIME OF ACTION

10. SALARY AT TIME OF ACTION

$ PER

11. ARE YOU A VETERAN OR ENTITLED TO THE EMPLOYMENT RIGHTS OF A VETERAN?
☐ NO ☐ YES

12. TYPE OF APPOINTMENT
☐ Temporary ☐ Applicant
☐ Permanent ☐ Term

13. TYPE OF SERVICE
☐ Competitive
☐ Excepted

14. LENGTH OF GOVERNMENT SERVICE

15. LENGTH OF SERVICE WITH ACTING AGENCY

16. ARE YOU RETIRED?
☐ NO ☐ YES

16A. IF YES, DATE OF RETIREMENT *(Month, day, year)*

17. WERE YOU SERVING A PROBATIONARY OR TRIAL PERIOD AT TIME ACTION WAS TAKEN BY THE AGENCY?
☐ NO ☐ YES

18. DATE WRITTEN PROPOSED ACTION NOTICE RECEIVED *(Month, day, year) (Attach copy)*

19. DATE FINAL DECISION NOTICE RECEIVED *(Month, day, year)*

20. EFFECTIVE DATE OF ACTION *(Month, day, year)*

50263-101

NSN 7540-01-088-1220

MERIT SYSTEMS PROTECTION BOARD
5 CFR 1201

21. WHY DO YOU THINK THE AGENCY WAS WRONG IN TAKING THIS ACTION? *(Explain briefly)*

22. WHAT ACTION WOULD YOU LIKE THE BOARD TO TAKE ON THIS CASE?

23. HAVE YOU, OR ANYONE ON YOUR BEHALF, FILED A FORMAL GRIEVANCE OR COMPLAINT, INCLUDING AN UNFAIR LABOR PRACTICE CHARGE, WITH YOUR AGENCY OR ANY OTHER AGENCY CONCERNING THIS MATTER?

☐ NO ☐ YES *(Attach copy)*

23A. IF YES, DATE FILED *(Month, day, year)*	23B. PLACE FILED *(Agency and location)*	23C. HAS DECISION BEEN ISSUED? ☐ NO ☐ YES
23D. IF YES, DATE ISSUED *(Month, day, year)*	23E. NAME OF ISSUING OFFICIAL	23F. TITLE OF ISSUING OFFICIAL

24. IF YOU BELIEVE YOU WERE DISCRIMINATED AGAINST BY THE AGENCY BECAUSE OF EITHER YOUR RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, MARITAL STATUS, POLITICAL AFFILIATION, HANDICAPPING CONDITION, OR AGE, INDICATE SO AND EXPLAIN WHY YOU BELIEVE IT TO BE TRUE. YOU MUST INDICATE, BY EXAMPLES, HOW YOU WERE DISCRIMINATED AGAINST.

25. HAVE YOU FILED A DISCRIMINATION COMPLAINT WITH YOUR AGENCY OR ANY OTHER AGENCY? ☐ NO ☐ YES *(Attach copy)*

25A. IF YES, DATE FILED *(Month, day, year)*	25B. PLACE FILED *(Agency and location)*	25C. HAS THERE BEEN A DECISION? ☐ NO ☐ YES

PAGE 3

PART III. HEARING

26. YOU HAVE A RIGHT TO A HEARING ON THIS APPEAL. IF YOU DO NOT WANT A HEARING, THE BOARD WILL MAKE ITS DECISION ON THE BASIS OF THE DOCUMENT YOU AND THE AGENCY SUBMIT. DO YOU WANT A HEARING?

☐ NO ☐ YES

IF YOU CHOOSE TO HAVE A HEARING, THE BOARD WILL NOTIFY YOU WHEN AND WHERE IT IS TO BE HELD.

27. YOU HAVE THE RIGHT TO DESIGNATE SOMEONE TO REPRESENT YOU ON THIS APPEAL IF HE/SHE AGREES TO DO SO. THIS PERSON DOES NOT HAVE TO BE A ATTORNEY. THE AGENCY HAS A RIGHT TO CHALLENGE YOUR CHOICE OF A REPRESENTATIVE IF THERE IS A CONFLICT OF INTEREST OR POSITION. YOU MA CHANGE YOUR DESIGNATION OF A REPRESENTATIVE AT A LATER DATE, IF YOU SO DESIRE, BUT MUST NOTIFY THE BOARD PROMPTLY OF ANY CHANGE.

27A. "I HEREBY DESIGNATE ________________________ TO SERVE AS MY REPRESENTATIVE DURING THE COURSE OF TH APPEAL. I UNDERSTAND THAT MY REPRESENTATIVE IS AUTHORIZED TO ACT ON MY BEHALF."

▶

27B. YOUR SIGNATURE	27C. DATE	27D. REPRESENTATIVE'S SIGNATURE *(if any)*	27E. DATE

27F. REPRESENTATIVE'S ADDRESS	27G. REPRESENTATIVE'S EMPLOYER

28. YOU MAY BE PERMITTED TO CALL WITNESSES AT A HEARING UPON THE APPROVAL OF THE PRESIDING OFFICIAL. IF YOU INTEND TO DO SO, PROVIDE THEIR NAME AND A BRIEF STATEMENT OF THEIR RELATIONSHIP TO THE CASE. YOU WILL BE PERMITTED TO REQUEST OTHER WITNESSES LATER IF YOU DO NOT LIST THE NOW.

A. NAME	B. RELATIONSHIP TO CASE

PART IV. REDUCTION-IN-FORCE (RIF)

INSTRUCTIONS: FILL OUT THIS PART ONLY IF YOU ARE APPEALING FROM A REDUCTION-IN-FORCE (RIF). YOUR AGENCY'S PERSONNEL OFFICE CA FURNISH YOU MOST OF THE INFORMATION REQUESTED BELOW

29. TENURE OF SUB-GROUP	30. SERVICE COMPUTATION DATE	31. HAS YOUR AGENCY OFFERED YOU ANOTHER POS TION RATHER THAN SEPARATING YOU? ☐ NO ☐ YES
32. TITLE OF OFFERED POSITION	33. GRADE OF POSITION OFFERED	34. SALARY OF POSITION OFFERED $ PER

35. LOCATION OF OFFERED POSITION	36. DID YOU ACCEPT THIS POSITION? ☐ NO ☐ YES

37. EXPLAIN WHY YOU BELIEVE YOU SHOULD NOT HAVE BEEN AFFECTED BY THE REDUCTION-IN-FORCE. *(Explanations could include: You were placed in the wron tenure subgroup; an error was made in the computation of your service computation date; competitive area was too narrow; improperly reached for separation fro competitive level; an exception was made to the regular order of selection; full 30-day notice was not given; you believe you can "bump" a person in a lower tenure sub group; or any other reasons. Please provide as much information as possible regarding each reason.)*

(Continue on the next page

OPTIONAL FORM 283 (1/80) PAGE

37. (Continued from Page 3.)

[illegible]

ATTENTION—THIS APPEAL MUST BE SIGNED

I CERTIFY that all of the statements made in this Appeal are true, complete, and correct to the best of my knowledge and belief.	SIGNATURE OF APPELLANT	DATE SIGNED

* U.S. GOVERNMENT PRINTING OFFICE : 1985 O - 461-336 (0402) **OPTIONAL FORM 283** (1-85) PAGE 4

[50 FR 18225, Apr. 30, 1985]

ATTACHMENT TO APPENDIX I-A—VOLUNTARY EXPEDITED APPEALS PROCEDURE

Employees or applicants for employment who are entitled to file and appeal before the Board may elect the voluntary expedited procedure as an alternative to the formal Board procedures. The goal of this expedited process is the issuance of a nonprecedential decision in routine cases within 60 days of the election of the voluntary expedited appeals procedure.

If an employee or an applicant for employment elects to use this alternative procedure, the employing agency will be allowed to elect or decline the procedure as well. In the event the employing agency does not wish to use the expedited procedure, the appeal will be processed in accordance with the existing Board procedures.

If the agency also elects the voluntary expedited appeals procedure, the regional director will review the summary of the case filed by the agency and determine whether the case is appropriate for the expedited procedure. The standards used in making this determination will be the routine, nonprecedential nature of the appeal as well as workload requirements and availability of resources in the regional office.

If the case is processed under this expedited process, the parties will be notified by an Order of Acknowledgment of their obligation to file a Joint Appeals Record containing statements of issues and positions with respect to those issues, requests for hearing, witness lists, the agency's file and two dates agreed upon by the parties of the hearing. A presiding official specially trained in informal dispute resolution will contact the parties during this time to ensure that the parties understand their obligations and help promote an environment conducive to informal settlement.

In the event settlement is not achieved, a hearing, if requested will be held at *the employment site* within 15 days from the date the Joint Appeals Record is due. The presiding official will then issue an expedited initial decision no later than 15 days from the close of the hearing. If no hearing is requested, a decision on the record will be issued no later then 60 days from the date of the Board's acknowledgment order.

Any party may file a petition for Board review of the expedited initial decision 35 days from the date of the decision. The criteria for review are the same under both the voluntary expedited appeals procedure and the formal appeals procedure.

APPENDIX II TO PART 1201—APPROPRIATE REGIONAL OFFICE FOR FILING APPEALS

All submissions shall be addressed to the Regional Director, Merit Systems Protection Board, at the below-listed addresses, according to geographic region of the employing agency.

Address of Appropriate Regional Office and Area Where Agency is Located:

1. Atlantic Regional Office, 1776 Peachtree Street, NE, Atlanta, Georgia 30309 (Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina).
2. Boston Regional Office, 150 Causeway Street, Room 1122, Boston, Massachusetts 02114 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont).
3. Chicago Regional Office, 230 South Dearborn Street, 31st Floor, Chicago, Illinois 60604 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin).
4. Dallas Regional Office, 1100 Commerce Street, Room 6F20, Dallas, Texas 75242 (Arkansas, Louisiana, Oklahoma, Texas, Swan Island).
5. Denver Regional Office, 730 Simms Street, Room 301, Golden, Colorado 80401 (Arizona, Colorado, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, Wyoming).
6. New York Regional Office, 26 Federal Plaza, Room 2341, New York, New York 10278 (New Jersey, New York, Puerto Rico, Virgin Islands).
7. Philadelphia Regional Office, U.S. Customhouse, Room 501, Second and Chestnut Street, Philadelphia, Pennsylvania 19106 (Camden County (New Jersey), Delaware, Maryland, Pennsylvania, Virginia, West Virginia).
8. St. Louis Regional Office, 1520 Market Street, Room 1740, St. Louis, Missouri 63103-2692 (Iowa, Kentucky, Missouri, Tennessee).
9. San Francisco Regional Office, 525 Market Street, Room 2800, San Francisco, California 94105 (California).
10. Seattle Regional Office, 915 Second Street, Room 1840, Seattle, Washington 98174 (Alaska, Hawaii, Idaho, Oregon, Washington, Pacific overseas).
11. Washington Regional Office, 5203 Leesburg Pike, Suite 1109, Falls Church, Virginia 22041 (Washington, D.C. Metropolitan Area, all overseas areas not otherwise covered).

[50 FR 15409, Apr. 18, 1985]

PART 1202—STATUTORY REVIEW BOARDS

§ 1202.1 Designation of Chair of Statutory Review Boards.

(a) Upon written request by the agency, the Chair of the Board shall designate a hearing officer of the Board to serve as Chair of any Board of Review established by the Secretary of Transportation under 5 U.S.C. 3383(b) for review of certain actions to remove air traffic controllers.

(b) The Board shall designate qualified employees of the Board to serve as chairs of performance rating review boards which may be established under Pub. L. 89-554(b) until all reviews of performance ratings pending prior to the effective date of the Act have been concluded.

(5 U.S.C. 1101 et seq.)

[44 FR 38362, June 29, 1979]

PART 1203—HEARING PROCEDURES FOR ORIGINAL JURISDICTION CASES

Subpart A—Review of the Rules and Regulations of the Office of Personnel Management

GENERAL

Sec.
1203.1 Application.
1203.2 Definitions.

PROCEDURES FOR REVIEW

1203.11 Request for regulation review.
1203.12 Board determination on the request for regulation review.
1203.13 Filings.
1203.14 Service.
1203.15 Review of regulations on the Board's own motion.
1203.16 Proceedings.

ORDER OF THE BOARD

1203.17 Final order of the Board.
1203.18 Enforcement of order.

AUTHORITY: 5 U.S.C. 1205 (a)(4), (e) and (g).

SOURCE: 46 FR 2327, Jan. 9, 1981, unless otherwise noted.

Subpart A—Review of Rules and Regulations of the Office of Personnel Management

GENERAL

§ 1203.1 Application.

(a) *General.* This Subpart applies to the Board's review of any rule or regulation ("regulations") issued by the Office of Personnel Management (OPM), on its face or as implemented by any agency, pursuant to the Board's authority under 5 U.S.C. 1205 (a)(4) and (e).

(b) *Application of Part 1201.* (1) Except as otherwise provided, where appropriate the Board may, on its own motion or that of a party, apply the provisions of 5 CFR Part 1201, Subpart B, to proceedings under this Subpart.

(2) The following provisions of 5 CFR Part 1201, Subpart B are specifically not applicable to proceedings under this Subpart.

(i) Sections 1201.21-1201.26 Petitions for Review of Agency Actions; and

(ii) Sections 1201.111-1201.118 Final decisions.

§ 1203.2 Definitions.

(a) *Invalid regulation.* A regulation issued by OPM which, on its face, would require an employee to commit a prohibited personnel practice if that regulation were implemented by any agency.

(b) *Invalidly implemented regulation.* A regulation issued by OPM which is implemented by an agency in such a manner that it has required, or will require, an employee to commit a prohibited personnel practice. A regulation which is valid on its face may be invalidly implemented.

(c) *Merit System principles.* Those principles set forth at 5 U.S.C. 2301(b) (1)-(9).

(d) *Pleadings.* Briefs, motions, requests for regulation review, responses and attachments.

(e) *Prohibited personnel practices.* Those impermissible actions set forth at 5 U.S.C. 2302(b) (1)-(11).

(f) *Regulation review.* The procedure whereby the Board, pursuant to 5 U.S.C. 1205(e), reviews the regulations issued by OPM on their face and/or as implemented for the purpose of determining whether they require any employee to commit a prohibited personnel practice. No regulation shall be reviewed prior to its effective date.

(g) *Request for regulation review.* A request for the Board to initiate a regulation review. Requests may be submitted by an interested person or upon the written complaint of the Special Counsel. A request for regulation review by an interested person may be denied or granted at the sole discretion of the Board. A request for regulation review by the Special Counsel shall be granted.

PROCEDURES FOR REVIEW

§ 1203.11 Request for regulation review.

(a) *Contents.* A request for regulation review shall contain the following:

(1) The name and address of the requestor or representative, if any;

(2) Identification by citation of the regulations being challenged;

(3) A statement (attaching any relevant documents) setting forth with particularity the reasons why the regulation and/or the implementation of the regulation has required, or will require the commission of, a prohibited personnel practice by any employee, including specific identification of the prohibited personnel practice at issue;

(4) In the event that the prohibited personnel practice complained of is one prohibited by 5 U.S.C. 2302(b)(11) the following additional information must be supplied:

(i) Identification of the law or regulation alleged to be violated and the basis of that violation;

(ii) Identification of the merit principles involved and an explanation of how the law or regulation in question implements or directly concerns that merit system principle(s);

(5) A statement of the action the requestor would like the Board to take; and

(6) The name, address and signature of the requestor's representative (or the requestor if there is no representative).

§ 1203.12 Board determination on the request for regulation review.

(a) *Order.* After considering the initial request for regulation review, the Board shall issue an order determining whether the request shall be granted or denied in whole or in part. Requests for regulation review submitted by the Special Counsel shall be granted.

(b) *Publication.* All Board orders granting or denying a request for regulation review shall be published in the FEDERAL REGISTER. Orders which grant the review, in whole or in part, shall set forth the following:

(1) Identification by citation of the regulations being challenged;

(2) Where appropriate, identification of the agency (agencies) involved;

(3) A statement of the issues to be addressed;

(4) The docket number assigned to the proceeding; and

(5) Appropriate directives for further adjudication, including the time period for filing responses in support of, or in opposition to, the petition for review.

§ 1203.13 Filings.

(a) *Place for each pleading and number of filings.* All pleadings shall be filed with the Secretary of the Merit Systems Protection Board, 1717 H Street, N.W., Washington, D.C. 20419. One original and three copies must be filed. All pleadings shall be made available in the Secretary's Office for review by the public.

(b) *Time for filing.* Under this Part, pleadings shall be filed in accordance with the following:

(1) *Request for regulation review.* May be filed at any time after the effective date of the regulation.

(2) *Responses to requests for regulation review.* A response in support of or in opposition to the request for review shall be filed within the time period provided in the Board's order published in the FEDERAL REGISTER granting the request for regulation review in whole or in part.

(3) *Replies.* A reply may be filed to the response(s) within 10 days after it is filed. The reply shall address only those matters raised in the response which were not addressed in the original request.

(4) *Motions.* Motions may be filed at any time. The filing of a motion shall not delay the action of the Board on any matter unless it so orders. Motions requesting extensions of time or continuances may be ruled on immediately if time does not permit consideration of the views of the other parties.

(5) *Oppositions.* Oppositions to motions shall be filed within five days of receipt of the motion.

(6) *Additional pleadings.* May be filed only if requested by the Board or it provides leave to do so. Pleadings filed without authorization shall not be considered.

(c) *Method and date of filing.* Filing may be made either by mail addressed to the Office of the Secretary or by personal delivery to that office. The date of filing shall be determined by the date of mailing indicated on the certified mail. If the filing is made by regular mail, the date of filing shall, in the absence of any evidence to the contrary, be presumed to be the date five days prior to the receipt of the mail by the Board. If the filing is by personal delivery, it shall be considered filed on the date it is received in the Office of the Secretary.

(d) *Extensions of time.* Requests for extensions of time will be granted only for good cause shown.

§ 1203.14 Service.

(a) *Method.* Service shall be made by the parties by mail or by personal delivery. Service by mail is accomplished by mailing to all parties or their representatives, at the last known address, a copy of the pleading and a certificate of service. Service by personal delivery is accomplished by delivering the pleading to the business office or home of the person to whom it is addressed and leaving it with that person, or with a responsible person at that address. Proof of service in the form of a certificate of service must be submitted to the Board.

(b) *Parties.* The request for review of regulations shall be served on the Director of OPM in all instances and the chief executive officer of the implementing agency when the implementation of a regulation is being challenged. All other pleadings shall be served on the party requesting the regulation review and any other parties as designated by order of the Board.

§ 1203.15 Review of regulations on the Board's own motion.

Order for regulation review. The Board may, from time to time, initiate a regulation review on its own motion pursuant to 5 U.S.C. 1205(e)(1)(A). Notice of this review will be published in the FEDERAL REGISTER.

§ 1203.16 Proceedings.

The Board has substantial discretion in conducting a regulation review under this Subpart. The review may be undertaken on the basis of the pleadings alone or on one or more of the following:

(a) Submission of additional written comments;

(b) Presentation of oral argument;

(c) Evidentiary hearing; or

(d) Any other procedures in accordance with law and as deemed appropriate by the Board.

ORDER OF THE BOARD

§ 1203.17 Final order of the Board.

(a) *Invalid regulation.* In the event that the Board determines that a regulation is invalid on its face in whole or in part, it shall require any agency to cease compliance with such provision and may order such other remedial action as necessary.

(b) *Invalidly implemented regulation.* In the event that the Board determines that a regulation has been invalidly implemented in whole or in part, it shall require the agency (agencies) to terminate the invalid implementation.

(c) *Corrective action.* The Board may order such corrective action as is necessary to ensure compliance with its order, including but not limited to:

(1) The implementation of the necessary remedial measures to reverse the effets of any prohibited personnel practice;

(2) Cancellation of any personnel action related to the prohibited personnel practice;

(3) Award of back pay and benefits;

(4) Award of attorney fees;

(5) Rescission of any action related to the cancelled personnel action;

(6) Removal of any reference, record or document within an employee's personnel folder related to the prohibited personnel practice; and

(7) Requiring submission by the agency of a verified report setting forth its compliance with the order.

§ 1203.18 Enforcement of order.

(a) *Petition.* Any party may petition the Board for enforcement of a final order issued under this Subpart. This petition shall be filed with the Office of the Clerk of the Board, and shall be served upon all parties to the original review. The petition shall specifically set forth the reasons why the petitioning party believes there has been a failure to comply with the order of the Board.

(b) *Compliance.* The Board shall take all necessary action to ascertain whether there has been compliance with the final decision of the Board. Where compliance has not been made, the Board shall undertake such actions as are necessary to obtain compliance.

(c) *Enforcement.* Where appropriate, the Board may institute enforcement procedures as set forth at 5 CFR 1201.184.

[46 FR 2327, Jan. 9, 1981, as amended at 49 FR 35331, Sept. 7, 1984]

PART 1204—FREEDOM OF INFORMATION ACT

Subpart A—Purpose and Policy

Sec.
1204.1 Purpose.
1204.2 Policy.

Subpart B—Procedures for Obtaining Records

1204.11 Submission of request.
1204.12 Time limitations and determinations.
1204.13 Fees.
1204.14 Denials.

Subpart C—Appeals

1204.21 Submission.
1204.22 Determinations on appeal.

AUTHORITY: 5 U.S.C. 552.

SOURCE: 44 FR 43448, July 24, 1979, unless otherwise noted.

Subpart A—Purpose and Policy

§ 1204.1 Purpose.

The purpose of this part is to set forth the procedures pursuant to the Freedom of Information Act ("the Act") through which the public may obtain records controlled by the Board.

§ 1204.2 Policy.

(a) It is the policy of the Board to release records when:

(1) The request submitted reasonably describes such records; and

(2) The request is made in accordance with the rules of this part.

(b) Records shall be disclosed to a requestor unless:

(1) They are exempt from disclosure under subsection (b) of the Act; and

(2) Their disclosure would not be in the public interest.

Subpart B—Procedures for Obtaining Records

§ 1204.11 Submission of request.

(a) *Place.* Requests for copies of records shall be made to the appropriate regional office of the Board, or the Office of the Clerk of the Board, Merit Systems Protection Board, Washington, D.C. If the requester has reason to believe the records in question are located in a regional office, it is appropriate to submit the request to that office. Requests to the region shall be addressed to the Regional Director at the appropriate regional office listed in Appendix II of 5 CFR Part 1201. Requests shall be made during normal business hours, or submitted by mail. Requests shall be in writing.

(b) *Form.* Each request shall reasonably describe the record including any name, subject matter and number or date where possible so that the Board can identify and locate the record. Requests submitted by mail shall be clearly marked as a "FREEDOM OF INFORMATION ACT REQUEST" on both the envelope and letter.

(c) *Payment.* Records usually will not be released until fees have been received, unless the fees are waived according to § 1204.13(b) of this part.

[44 FR 43448, July 24, 1979, as amended at 48 FR 6312, Feb. 11, 1983; 48 FR 13954, Apr. 1, 1983; 49 FR 35331, Sept. 7, 1984]

§ 1204.12 Time limitations and determinations.

(a) *Board determinations.* The Board shall make a determination on the request within 10 working days except under "unusual circumstances."

(1) "Unusual circumstances" means:

(i) The need to obtain the records from other offices;

(ii) The need to obtain and examine a large number of records; or

(iii) The need to consult with another agency having substantial interest in the records requested.

(b) *Time extensions.* Where "unusual circumstances" exist, the Board may extend the time period for making a determination on the request for no more than 10 additional working days and shall notify the requestor of the extension.

(c) *Improper request.* If a request or an appeal is not properly labeled or is submitted to the wrong office, the time for processing the request shall run from the time it is received by the proper official.

(d) *Determining Officials.* Determinations on requests shall be made by the Clerk of the Board or any Director of one of the Board regional offices.

[44 FR 43448, July 24, 1979, as amended at 48 FR 6312, Feb. 11, 1983; 49 FR 35331, Sept. 7, 1984]

§ 1204.13 Fees.

(a) Requests for records are subject to the following schedule of costs:

(1) *Duplication.* (i) Photocopies of records duplicated by the Board shall be subject to a charge of 10 cents per page.

(ii) Fees for Board duplication of audio. video, and automated tapes shall be charged at the actual cost to the Board.

(iii) The Board, at its option, may delegate the duplication of Board records to commercial firms selected by the Board. These firms have been selected on the basis of overall cost and best service to the public. Duplication shall be subject to fee schedules established by the Board with the firms. Such fees may include a reasonable factor for overhead and profit. Payment for copies shall be made directly by the requester to the commercial firm. However, the fees shall not exceed the fees which the Board would be authorized to charge had it processed the request itself.

(2) *Manual Records Search.* $2.50 per quarter-hour if conducted by a clerical employee; $5.00 per quarter-hour if conducted by a professional or managerial employee.

(3) *Postage.* Fees for postage shall be charged at the actual cost to MSPB.

(b) *Waiver or Reduction of Fees.* The Clerk of the Board or Regional Director shall waive or reduce a fee when it is determined that furnishing the information will primarily benefit the general public.

[48 FR 6312, Feb. 11, 1983, as amended at 48 FR 6313, Feb. 11, 1983; 49 FR 35331, Sept. 7, 1984]

§ 1204.14 Denials.

Denials of a request for a record, in whole or in part, shall be in writing and shall state the reasons for the denial and notify the requestor of the right to appeal the denial.

Subpart C—Appeals

§ 1204.21 Submission.

(a) *Place.* Appeals shall be addressed to the Chair, Merit Systems Protection Board, Washington, D.C. 20419.

(b) *Form.* Appeals shall be clearly marked as "Freedom of Information Act Appeal" on both the envelope and letter. Appeals must be in writing and shall include:

(1) A copy of the original request;

(2) A copy of the written denial; and

(3) A statement of the reasons why the original denial should be overruled.

§ 1204.22 Determinations on appeal.

(a) Determinations by the Board on the appeal shall be made within 20 working days after receipt.

(b) Determinations on the appeal shall be in writing; shall state the reasons therefor if denied; and shall notify the requestor of the right to judicial review of any denial.

PART 1205—PRIVACY ACT

Subpart A—Scope

Sec.
1205.1 Purpose.
1205.2 Policy.
1205.3 Definitions.
1205.4 Disclosure of Privacy Act Records.

Subpart B—Procedures for Obtaining Records

1205.11 Submission of request.
1205.12 Time limitations and determinations.
1205.13 Identification.
1205.14 Grant of access.
1205.15 Denial of access.
1205.16 Fees.

Subpart C—Amendment of Records

1205.21 Request for amendment.
1205.22 Action on request.
1205.23 Time limitations.

Subpart D—Appeals

1205.31 Submission of appeal.
1205.32 Determinations on appeal.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 44 FR 43449, July 24, 1979, unless otherwise noted.

Subpart A—Scope

§ 1205.1 Purpose.

The purpose of this part is to set forth the procedures pursuant to the Privacy Act ("the Act") by which an individual may make an inquiry regarding a record, gain access to such record, or amend the record.

§ 1205.2 Policy.

It is the policy of the Board to facilitate the full exercise of rights conferred by the Act upon individuals and to insure the privacy of records maintained regarding such individuals. Such records shall contain only that information which is relevant and necessary to the functions of the Board and shall be treated in a manner which is fully in accordance with the provisions of the Act.

§ 1205.3 Definitions.

The definitions of 5 U.S.C. 522a apply to this part and are incorporated herein by reference. As used in this part:

"Inquiry" means a request by an individual regarding whether the Board has a record which pertains to that individual.

"Request for access" means a request by an individual to inspect or copy a record.

"Request for amendment" means a request by an individual to change the substance of a particular record by addition, deletion or other correction.

"Requestor" means the individual requesting access or amendment to a record. The individual may be either the person to whom the record requested pertains; a legal guardian acting on behalf of an individual; or a representative designated by that individual.

§ 1205.4 Disclosure of Privacy Act Records.

Records subject to the Privacy Act may be released to persons other than the person to whom the record pertains if such disclosure is permitted under 5 U.S.C. 552a(b) (1-11). This includes release as required by the Freedom of Information Act.

Subpart B—Procedures for Obtaining Records

§ 1205.11 Submission of request.

(a) *Place.* Inquiries or requests for access to records shall be made to the appropriate regional office of the Board, or the Office of the Clerk of the Board, Merit Systems Protection Board, Washington, D.C. 20419. If the requester has a reason to believe the records in question are located in a regional office, it is appropriate to submit the request to that office. Requests to the region shall be addressed to the Regional Director at the appropriate regional office listed in Appendix II of 5 CFR Part 1201.

(b) *Form.* Each submission shall contain the following information:

(1) Name, address and telephone number of the individual to whom the record pertains;

(2) Name, address and telephone number of the individual making the request if the requestor is someone other than the person to whom the record pertains such as an attorney or

legal guardian, and evidence of the relationship such as: An authenticated copy of the birth certificate of the minor child, or the court document appointing the individual legal guardian; or an agreement for representation signed by the individual to whom the record pertains;

(3) Such additional information as may assist the Board in responding to the request (for example, the name of the agency which is taking the action, the subject matter of the case, etc.);

(4) Date of inquiry;

(5) Requestor's signature; and

(6) Indication both on the envelope and the letter that the inquiry is a "PRIVACY ACT REQUEST."

(c) Each submission shall comply with the identification requirements set forth in § 1205.13.

(d) *Payment.* Records usually will not be released until fees have been received.

[44 FR 43449, July 24, 1979, as amended at 48 FR 6312, Feb. 11, 1983; 49 FR 35331, Sept. 7, 1984]

§ 1205.12 Time limitations and determinations.

(a) *Board determinations:* The Board shall make a determination on the request within 10 working days except under "unusual circumstances" as described below:

(1) The need to obtain the records from other offices;

(2) The need to obtain and examine a large number of records;

(3) The need to consult with another agency having substantial interest in the records requested; or

(4) Other extenuating circumstances which reasonably prohibit the Board from processing the request within the 10-day period.

(b) *Time extensions.* Where "unusual circumstances" exist, the Board may extend the time period for making a determination on the request for no more than 10 additional working days and shall notify the requestor of the extension.

(c) *Improper request.* If a request or an appeal is not properly labeled or is submitted to the wrong office, the time for processing the request shall run from the time it is received by the proper official.

(d) *Determining Officials.* Determinations on requests shall be made by the Clerk of the Board or by any Director of one of the Board regional offices.

[44 FR 43449, July 24, 1979, as amended at 48 FR 6312, Feb. 11, 1983; 49 FR 35331, Sept. 7, 1984]

§ 1205.13 Identification.

(a) *In person.* Each individual making a request in person shall be required to present satisfactory proof of identity. In order of preference the following items shall be acceptable.

(1) A document bearing the requestor's photograph; or

(2) A document bearing the individual's signature.

(3) In the event paragraph (a)(1) or (2) of this section are not available, the requestor will be required to sign a statement asserting his/her identity and acknowledging the requestor's understanding that misrepresentation of identity in order to obtain a record is a misdemeanor and subject to a possible fine of $5,000 under 5 U.S.C. 552a(i)(3).

(b) *By mail.* The identification of a requestor making a request by mail must be certified by a notary public or equivalent official or contain other information sufficient to identify the requestor.

(c) *Parents of minors, legal guardians and representatives.* Parents of minors, legal guardians and representatives must submit identification pursuant to paragraph (a) or (b) of this section. Additionally, they must present an authenticated copy of the minor's birth certificate, court order of guardianship, or agreement of representation where appropriate.

§ 1205.14 Grant of access.

(a) The alternative methods of access may be granted for inspection of records:

(1) Personal inspection during normal business hours;

(2) Transfer of records to a suitable Federal facility in closer proximity to the requestor;

(3) Provision of copies by mail.

(b) An individual seeking personal access to records may be accompanied by another individual of his/her choice. However, the requestor shall be required to sign a written statement authorizing the discussion and presentation of his/her record in the accompanying individual's presence.

§ 1205.15 Denial of access.

(a) *Basis.* In accordance with 5 U.S.C. 552a(k)(2) the Board may deny access to records which are of an investigatory nature and are compiled for law enforcement purposes. Such requests will be denied only where access to such records would otherwise be unavailable under exemption (b)(7) of the Freedom of Information Act.

(b) *Form.* All denials of access under this section will be made in writing and will notify the requestor of the right to judicial review.

§ 1205.16 Fees.

(a) No fees shall be charged by the Board for any other purpose than making copies of records.

(b) *Duplication.* (1) Photocopies of records duplicated by the Board shall be subject to a charge of 10 cents per page.

(2) Fees for Board duplication of audio, video and automated tapes shall be charged at the actual cost to the Board.

(c) It is the policy of the Board to provide one copy of the amended pages of any record free of charge as evidence of the amendment.

[44 FR 43449, July 24, 1979, as amended at 48 FR 13954, Apr. 1, 1983]

Subpart C—Amendment of Records

§ 1205.21 Request for amendment.

A request for amendment of a record shall be made to the Chief Appeals Officer at a field office or the Clerk of the Board of the Merit Systems Protection Board, Washington, D.C. 20419, depending on which office is maintaining the record. The request shall be in writing and shall be designated on the outside of the envelope and the letter as a "Privacy Act Request" and shall include the following information:

(a) Identification of the record to be amended;

(b) A description of the amendment requested (*e.g.,* addition, deletion, placement of amendment, etc.);

(c) A statement of the basis for the amendment and supporting documentation, if any.

§ 1205.22 Action on request.

(a) *Amendment granted.* Where the amendment requested is granted the requestor shall be notified and supplied a copy of the amendment.

(b) *Amendment denied.* Where the amendment requested is denied in whole or in part the requestor shall be notified in writing and provided the following information:

(1) The basis for the denial; and

(2) The procedures for appealing the denial.

§ 1205.23 Time limitations.

The appropriate official shall acknowledge a request for amendment within 10 days after receipt and shall make a determination on the request.

Subpart D—Appeals

§ 1205.31 Submission of appeal.

(a) *Place.* Appeals shall be addressed to the Chair, Merit Systems Protection Board, Washington, D.C. 20419.

(b) *Form.* Appeals shall be in writing, shall be clearly marked "PRIVACY ACT APPEAL" on both the envelope and letter; and shall include:

(1) A copy of the original request for amendment;

(2) A copy of the denial; and

(3) A statement of the reasons why the orginal denial should be overruled.

§ 1205.32 Determinations on appeal.

(a) A written determination on the appeal shall be made within 30 working days unless the Chair determines that there is good cause for extension. Where an appeal is improperly labeled or is submitted to an inappropriate official, the time limitation for processing the request shall run from the time it is received by the Chair.

(b) If the amendment is granted on appeal, the Chair shall direct that the amendment be made and shall supply the requestor with a copy of the amended record.

(c) If the amendment is denied, the Chair shall notify the requestor of the denial and inform him/her of:

(1) The basis for the denial;

(2) The right to file a concise statement with the Board stating the reasons for his/her disagreement with the denial which shall become a part of the record; and

(3) The right to judicial review of the decision under 5 U.S.C. 552a(g)(1)(A).

PART 1206—OPEN MEETINGS

Subpart A—Purpose and Policy

Sec.
1206.1 Purpose.
1206.2 Policy.
1206.3 Definitions.

Subpart B—Procedures

1206.4 Notice of meeting.
1206.5 Change in meeting plans after notice.
1206.6 Determination to close meeting.
1206.7 Record of meetings.
1206.8 Provision of information to the public.
1206.9 Procedures for expedited closing of meetings.

Subpart C—Conduct of Meetings

1206.11 Meeting place.
1206.12 Role of observers.

Authority: 5 U.S.C. 552b.

Source: 44 FR 43451, July 24, 1979, unless otherwise noted.

Subpart A—Purpose and Policy

§ 1206.1 Purpose.

The purpose of this part is to set forth the procedures pursuant to the Government in the Sunshine Act (5 U.S.C. 552b) ("the Act") by which the Board will conduct open meetings.

§ 1206.2 Policy.

It is the policy of the Board to provide the public with the fullest practicable information regarding the decision-making processes of the Board. Board meetings involving deliberations which determine or result in the joint conduct or disposition of official Board business are presumptively open to the public. It is the intent of these regulations to open such meetings to public observation while protecting individuals' rights and the Board's ability to carry out its responsibilities. Board meetings will be closed in whole or in part only in accordance with the exemptions provided under 5 U.S.C. 552b(c) and where to do so is in the public interest.

§ 1206.3 Definitions.

In this part:

"Meeting" means the deliberations of at least two Board Members where such deliberations determine or result in the joint conduct of official Board business.

"Member" means one of the Members of the Merit Systems Protection Board.

Subpart B—Procedures

§ 1206.4 Notice of meeting.

(a) Notices of Board meetings shall be published in the Federal Register at least one week prior to the meeting. Such notice shall include the following information:

(1) Time;

(2) Place;

(3) Subject of meeting and agenda;

(4) Whether the meeting is to be opened or closed; and

(5) The name and telephone number of a Board official responsible for receiving inquiries regarding the meeting.

(b) The Board may, by majority vote, provide less than one week's notice but such notice shall be provided at the earliest practicable time.

§ 1206.5 Change in meeting plans after notice.

(a) Following notice of a meeting, the time or place of a meeting may be changed only if the change is announced publicly at the earliest practicable time.

(b) Following notice of a meeting, the subject matter of a meeting or the determination to open or close a meeting may be changed only if both of the following conditions are met:

(1) There must be a majority, recorded vote of the Board members that Board business requires the

change and that no earlier announcement of such changes was possible; and

(2) There must be a notice of the change in the FEDERAL REGISTER and of the individual Board Members' votes at the earliest practicable time.

§ 1206.6 Determination to close meeting.

(a) *Basis.* The Board, by majority vote, may determine to close a meeting in accordance with the provisions of 5 U.S.C. 552b(c)(1-10) and where it is in the public interest.

(b) *General Counsel Certification.* Where the Board has determined that a meeting shall be closed in whole or in part, the General Counsel shall certify the propriety of doing so and state the basis therefor.

(c) *Vote.* Where the Board has voted to close a meeting, within one day of such vote the Board shall make publicly available a record reflecting the vote of each Member on the question. In addition, within one day of any vote which closed a portion or portions of a meeting to the public, the Board shall make publicly available a full written explanation of its decision to close the meeting together with a list naming all persons expected to attend and identifying their affiliation, unless such disclosure would reveal the information that the meeting itself was closed to protect.

§ 1206.7 Record of meetings.

(a) *Closed Meeting.* Where the Board has determined that a meeting shall be closed in whole or in part the following record shall be maintained:

(1) A transcript of recording of the proceeding;

(2) A copy of the General Counsel's certification;

(3) A statement from the presiding official setting forth the time and place of the meeting and the persons present; and

(4) A recordation of all votes and all documents considered (which may be part of the transcript).

(b) *Open Meetings.* Transcripts or other recordations shall be made of all open meetings of the Board and shall be made available upon request at actual cost.

§ 1206.8 Provision of information to the public.

Information available to the public under this part shall be made available at the Office of the Clerk of the Board, Merit Systems Protection Board, Washington, D.C. 20419. Individuals or organizations having a special interest in activities of the Board may submit a request to the Office of the Secretary to be placed on a mailing list for receipt of information available under this part.

[44 FR 43451, July 24, 1979, as amended at 49 FR 35331, Sept. 7, 1984]

§ 1206.9 Procedures for expedited closing of meetings.

In lieu of the procedures specified in §§ 1206.4 through 1206.8, and 1206.11 and 1206.12, the Board may expedite the closing of its meetings under the following conditions using the following procedures:

(a) *Finding.* (1) The major part of regular Board business consists of reviewing field office initial decisions made on the record after an opportunity for a hearing and initial decisions made on the record by an administrative law judge. Based upon a review of this caseload, the legislative history of the Civil Service Reform Act of 1978 (Pub. L. 95-454), the Government in the Sunshine Act (5 U.S.C. 552b), and the Board's regulations at 5 CFR Part 1201 the Board finds that a majority of its meetings may properly be closed to the public under 5 U.S.C. 552b(c)(10) and (d)(4).

(2) Absent a compelling public interest to the contrary, meetings or portions of meetings that can be expected to be closed under these procedures include: consideration of petitions to review or cases that have been reopened or reviewed pursuant to 5 CFR 1201.114 through 1201.117; administrative law judge disciplinary cases heard initially by an administrative law judge under 5 CFR 1201.131 et seq.; and Special Counsel actions heard by an administrative law judge under 5 CFR 1201.129.

(b) *Announcement:* Public announcement of the time, place, and subject matter of meetings or portions thereof that are closed under this provision shall be made at the earliest practicable time.

(c) *Procedure for Closing:* At the beginning of a meeting or portion of a meeting to be closed under this section, the Board may, by recorded vote of two of its members, determine to close the meeting of portion thereof to public observation following receipt of a General Counsel's certification pursuant to § 1206.6(b).

(d) *Record Availability:* In the case of a meeting or portion of a meeting closed pursuant to this subsection, as soon as practicable, the Board shall make publicly available:

(1) A written record reflecting the vote of each participating member of the Board to close the meeting; and

(2) The General Counsel certification pursuant to § 1206.6(b).

[44 FR 65048, Nov. 9, 1979, as amended at 44 FR 68803, Nov. 30, 1979]

Subpart C—Conduct of Meetings

§ 1206.11 Meeting place.

Meetings shall be held in meeting rooms designated in the public announcement. Whenever the number of observers is greater than can be accommodated in the meeting room designated, alternative facilities shall be made available to the extent possible.

§ 1206.12 Role of observers.

The public may attend open meetings for the sole purpose of observation. Observers may not participate in meetings unless expressly invited to do so. Observers may not create distractions which interfere with the conduct and disposition of Board business and may be asked to leave if they do so. For the portions of meetings which are partially closed, observers shall leave the meeting room upon request.

SUBCHAPTER B—OFFICE OF THE SPECIAL COUNSEL

PART 1250—JURISDICTION AND DEFINITIONS

Sec.

1250.1 General authority of the Special Counsel.
1250.2 Scope.
1250.3 Definitions.

AUTHORITY: 5 U.S.C. 1206(k); Sec. 204(g) of Reorganization Plan No. 2 of 1978, unless otherwise noted.

SOURCE: 44 FR 75915, Dec. 21, 1979, unless otherwise noted.

§ 1250.1 General authority of the Special Counsel.

The Special Counsel is authorized to carry out the following general functions, as described in this subchapter:

(a) To receive and investigate allegations of prohibited personnel practices and certain other violations of law, rule or regulation.

(b) To receive and refer to agencies for investigation or a report certain disclosures of information reasonably believed by the discloser to evidence a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) To recommend corrective action to the agency involved when it is determined that there is reasonable ground to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

(d) To file with the Merit Systems Protection Board requests to order corrective action (if the agency has not taken the corrective action recommended after a reasonable period), requests for stays of prohibited personnel actions, and complaints for disciplinary action against federal employees, and intervene or otherwise participate in any proceeding before the Board.

§ 1250.2 Scope.

(a) The Special Counsel is required to receive and to investigate allegations of prohibited personnel practices and certain other activities prohibited by civil service law, rule, or regulation involving any Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, except that the prohibited personnel practices set forth below do not apply to:

(1) A Government corporation.

(2) The Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and certain other intelligence agencies excepted by the President.

(3) The General Accounting Office.

(4) The United States Postal Service and the Postal Rate Commission.

(b) The Special Counsel will investigate allegations of Hatch Act violations in any Executive agency, the U.S. Postal Service, and Postal Rate Commission and the District of Columbia Government.

(c) The Special Counsel will receive and act on information which evidences a violation of any law, rule, or regulation, or of mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, involving any Executive agency.

§ 1250.3 Definitions.

As used in this subchapter:

(a) "Personnel action" means—

(1) An appointment;

(2) A promotion;

(3) An adverse action under chapter 75 of title 5, United States Code or other disciplinary or corrective action;

(4) A detail, transfer, or reassignment;

(5) A reinstatement;

(6) A restoration;

(7) A reemployment;

(8) A performance evaluation under chapter 43 of title 5, United States Code;

(9) A decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other personnel action; or

(10) Any other significant change in duties or responsibilities which is in-

consistent with the employee's salary or grade level.

(b) "Prohibited personnel practice" means action by an employee who has authority to take, direct others to take, recommend, or approve any personnel action:

(1) That discriminates for or against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status or political afiliation, as prohibited by certain specified laws (see 5 U.S.C. 2302(b)(1));

(2) To solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless the recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of an evaluation of the work performance, ability, aptitude, or general qualifications of the individual, or an evaluation of the character, loyalty, or suitability of such individual;

(3) To coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

(4) To deceive or willfully obstruct any person with respect to such person's right to compete for employment;

(5) To influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

(6) To grant any preference or advantage not authorized by law, rule or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

(7) To appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in 5 U.S.C. 3110) of the employee if the position is in the agency in which the employee is serving as a public official (as defined in 5 U.S.C. 3110) or over which the employee exercises jurisdiction or control as an official;

(8) To take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for being a whistleblower, as defined in paragraph (c) of this section;

(9) To take or fail to take a personnel action against an employee or applicant for employment as a reprisal for the exercise of any appeal right granted by law, rule or regulation;

(10) To discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; or

(11) To take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in 5 U.S.C. 2301.

(c) "Whistleblower" means a present or former Federal employee or applicant for Federal employment who discloses information he reasonably believes evidences a violation of any law, rule or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial or specific danger to public health or safety, if the disclosure is not specifically prohibited by statute and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs. A protected disclosure may be oral or written and to any person within or outside the agency. Disclosure of information to the Special Counsel, agency Inspector General, or other employee designated by the agency head to receive such information is protected even if the disclosure would otherwise be prohibited by statute or is otherwise required by Executive order to be kept secret. Where the information disclosed affects only the personnel situation of the complainant, it will normally be treated as an allegation of a prohibited personnel practice or violation of other civil service law, rule or regulation, and the complainant will not be considered to be a whistleblower.

(d) "Gross waste of funds" means unnecessary expenditure of substantial sums of money, or a series of instances of unnecessary expenditures of smaller amounts.

(e) "Mismanagement" means wrongful or arbitrary and capricious actions that may have an adverse effect on the efficient accomplishment of the agency mission.

(f) "Abuse of authority" means an arbitrary or capricious exercise of power by a Federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to himself or to preferred other persons.

PART 1251—INVESTIGATIVE AUTHORITY OF THE SPECIAL COUNSEL

Sec.
1251.1 Matters subject to investigation.
1251.2 Deferral to administrative appeals procedures.
1251.3 Investigative policy in discrimination complaints.
1251.4 Closing cases and terminating investigations.
1251.5 Actions on results of investigations.

AUTHORITY: 5 U.S.C. 1206(k); sec. 204(g) of Reorganization Plan No. 2 of 1978.

SOURCE: 44 FR 75916, Dec. 21, 1979, unless otherwise noted.

§ 1251.1 Matters subject to investigation.

The Special Counsel is authorized—

(a) To receive and investigate allegations of prohibited personnel practices, as defined in § 1250.3 of this subchapter, and to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken (5 U.S.C. 1206(a)).

(b) In addition to matters described in paragraph (a) of this section, to conduct an investigation of any allegation concerning—

(1) Political activity by Federal employees and employees of the District of Columbia Government, prohibited by subchapter III of chapter 73 of title 5, United States Code (Hatch Act);

(2) Political activities by certain State and local officers and employees prohibited by chapter 15 of title 5, United States Code (Hatch Act);

(3) Arbitrary or capricious withholding of information prohibited under section 552 of title 5, United States Code (Freedom of Information Act), except that the Special Counsel shall make no investigation under this section of any withholding of foreign intelligence or counter-intelligence information the disclosure of which is specifically prohibited by law or by Executive order;

(4) Activities prohibited by any civil service law, rule, or regulation, including partisan political intrusion in personnel decisionmaking, except when the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure; and

(5) Involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action, except when the Special Counsel determines that such allegation may be resolved more appropriately under an administrative appeals procedure. (5 U.S.C. 1206(e)).

(c) In the absence of an allegation, the Special Counsel is authorized to conduct an investigation for the purpose of determining whether there are reasonable grounds to believe that a prohibited personnel pratice has occurred, exists, or is to be taken.

(d) To conduct an investigation for the purpose of determining whether disciplinary action is warranted against an agency officer or employee—

(1) Whenever a court orders the production of agency records improperly withheld under the Freedom of Information Act and finds that the circumstances surrounding the withholding raise questions of whether agency personnel acted arbitrarily or capriciously (5 U.S.C. 552(a)(4)(F)), and

(2) Whenever a court determines that an agency or department of the United States has violated the Right to Financial Privacy Act of 1978 and finds that the circumstances surrounding the violation raises questions of whether an officer or employee acted willfully or intentionally with respect

to the violation (section 1117 of Pub. L. 95-630).

§ 1251.2 Deferral to administrative appeals procedures.

Section 1206(e)(2) of title 5, United States Code, provides that the Special Counsel shall make no investigation of allegations described in § 1251.1(b)(4) or (5) of this part, if he determines that the matter may be resolved more appropriately under an administrative appeals procedure. The Special Counsel generally will not initiate an investigation in the following circumstances:

(a) The employee has a pending appeal on the same matter before the Merit Systems Protection Board, the Office of Personnel Management, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority, or a pending grievance under a formal agency or negotiated grievance proceeding, unless there is sufficient evidence submitted with the complaint to the Special Counsel to indicate the matter is not being properly processed.

(b) An administrative appeal proceeding has been completed, unless there is sufficient evidence submitted with the complaint to the Special Counsel to indicate the matter was not properly processed.

(c) An administrative proceeding was available to the complainant but the complainant did not file a timely appeal or otherwise failed to pursue the matter, unless the complainant can show that he was not notified of the prescribed time limit and was not aware of it or that circumstances beyond his control prevented him from filing an appeal within the prescribed time limits.

(d) The complainant alleges a violation of law, rule, or regulation in connection with a promotion action, particularly complaints of nonselection or general charges of "preselection", when the information submitted with the complaint to the Special Counsel does not evidence any prohibited personnel practice, as defined in § 1250.3 of this subchapter. In such circumstances the complainant should utilize the agency or negotiated grievance procedure if the matter is grievable.

§ 1251.3 Investigative policy in discrimination complaints.

The Special Counsel is authorized to investigate allegations of discrimination prohibited by law, as defined in § 1250.3(b)(1) of this subchapter. Since procedures for investigating discrmination complaints have already been established in the agencies and the Equal Employment Opportunity Commission, the Special Counsel will normally avoid duplicating those procedures and will defer to those procedures rather than initiating an independent investigation. However, the Special Counsel will—

(a) Assert independent investigative jurisdiction in those circumstances where it appears that the agency is not processing the complaint consistent with provisions of applicable statutes and regulations; and

(b) In lieu of asserting independent jurisdiction over a complaint, monitor agency or EEOC processing of the complaint, whenever he determines this to be necessary or appropriate.

§ 1251.4 Closing cases and terminating investigations.

(a) The Special Counsel will notify the complainant of the closing of the case and the reasons therefore, when the matter complained of is not within the investigative jurisdiction of the Special Counsel.

(b) The Special Counsel will notify the complainant of the termination of any investigation under this part and the reasons therefore, and any action taken by the Special Counsel on the allegation.

§ 1251.5 Actions on results of investigations.

(a) If the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice, as defined in § 1250.3 of this subchapter, has occurred, exists, or is to be taken, which requires corrective action, he reports his determinations, findings and recommendations to the agency, the Merit Systems Protection Board, and the Office of Personnel Management, and may report such finding to the President (5 U.S.C. 1206(c)(1)). If the agency involved fails to take the action recommended within a reasonable period specified by the Special Counsel, the Special Counsel may request the Board to consider the matter pursuant to 5 U.S.C. 1206(c)(1)(B).

(b) If the Special Counsel has reasonable cause to believe any other violation of any law, rule or regulation has occurred (*i.e.*, violations other than or in addition to a prohibited personnel practice), he is required to report this to the agency head concerned and to require, within 30 days, a certificate by the agency head which states that (1) the agency head has personally reviewed the report of the Special Counsel, (2) what action has been, or is to be taken, and (3) when the action will be completed (5 U.S.C. 1206(c)(3)). Agency head certifications are included in the public list, provided for in § 1260.1 of this subchapter.

(c) When the investigation indicates that disciplinary action against any employee subject to disciplinary charges by the Special Counsel is warranted, the Special Counsel may file a complaint, together with a statement of supporting facts with the Merit Systems Protection Board. The complaint and statement of supporting facts shall be served on the employee at the same time it is filed with the Board. Additionally, in the case of violations of provisions of chapter 15 of title 5, United States Code (political activity of certain State and local officers and employees), the complaint, including the statement of supporting facts, shall be served on the State or local agency as well as the officer or employee (5 U.S.C. 1206(g)).

(d) In the case of a complaint for disciplinary action against an employee in a confidential, policy-making, policy-determining, or policy-advocating position appointed by the President by and with the advice and consent of the Senate (other than an individual in the Foreign Service of the United States), the Special Counsel shall submit the complaint including a statement of supporting facts and the employee's response to the complaint to the President for appropriate action in lieu of presenting the complaint before the Merit Systems Protection Board. (5 U.S.C. 1206(g)).

(e) When the Special Counsel believes that there is in an agency a pattern of prohibited personnel practices not otherwise appealable to the Merit Systems Protection Board under any law, rule or regulation, the Special Counsel may file a complaint with the Board against the agency involved to obtain an order for appropriate corrective action. (5 U.S.C. 1206(h)).

(f) If, in connection with any investigation under this part, the Special Counsel determines that there is reasonable cause to believe that a criminal violation by an employee has occurred, he shall report the determination to the Attorney General and to the head of the agency involved, and shall submit a copy of the report to the Director of the Office of Personnel Management and the Director of the Office of Management and Budget. The referral of an alleged criminal violation to the Attorney General does not preclude the Special Counsel from conducting any investigation or proceeding concerning prohibited personnel practices instituted under this part. (5 U.S.C. 1206(c)(2)).

PART 1252—DISCLOSURES OF INFORMATION (WHISTLEBLOWING)

Sec.

1252.1 Applicability.
1252.2 Referral to agency heads under 5 U.S.C. 1206(b)(3); reports from agency heads.
1252.3 Referral to agency heads under 5 U.S.C. 1206(b)(7).
1252.4 Failure of agency head to file report pursuant to § 1252.2.
1252.5 Review of agency report.
1252.6 Foreign intelligence or counterintelligence information.

AUTHORITY: 5 U.S.C. 1206(k), sec. 204(g) of Reorganization Plan No. 2 of 1978.

SOURCE: 44 FR 75918, Dec. 21, 1979, unless otherwise noted.

§ 1252.1 Applicability.

This part applies to disclosures of information not specifically required by law or Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs, which the discloser reasonably believes evidences a violation of any law, rule or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to the public health or safety. This part applies only to disclosures made by or on behalf of a present or former federal employee or applicant for employment.

[44 FR 75918, Dec. 21, 1979, as amended at 47 FR 13362, Mar. 30, 1982]

§ 1252.2 Referral to agency heads under 5 U.S.C. 1206(b)(3); reports from agency heads.

(a) If after review of the information received under this part the Special Counsel determines that there is a substantial likelihood that the information discloses a violation of any law, rule or regulation, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health or safety, he will, if the information was transmitted to him by an employee or former employee or applicant for employment in the agency which the information concerns, or by an employee who obtained the information in connection with the performance of his duties and responsibilities, require the head of the agency to conduct an investigation of the information and any related matters and to submit to the Special Counsel a written report setting forth the findings of the head of the agency.

(b) Any report required by the Special Counsel under this section shall be submitted, together with five additional copies, within 60 calendar days after the date on which the Special Counsel transmitted the information to the head of the agency, or within any reasonable longer period of time agreed to in writing by the Special Counsel. In the event the agency finds that it is unable to adequately investigate and report within the time limit imposed by the statute, the agency shall, as soon as practicable, but not less than ten days before the date the report is due to the Special Counsel, submit a written request for extension of time to the Special Counsel specifying the additional time required and the reasons therefor.

(c) Any report required under this section shall be reviewed and signed by the agency head and shall include: (1) A summary of the information with respect to which the investigation was initiated; (2) a description of the conduct of the investigation; (3) a summary of any evidence obtained from the investigation; (4) a listing of any violation or apparent violation of any law, rule, or regulation; (5) a description of any corrective action taken or planned to be taken as a result of the investigation, including, but not limited to, changes in agency rules, regulations, or practices, restoration of any aggrieved employee, disciplinary action against any employee, and referral to the Attorney General of any evidence of a criminal violation.

(d) Any report required under this section which does not bear the signature of the agency head does not meet the requirements of 5 U.S.C. 1206(b)(4) and will be returned for the personal review and signature of the agency head.

(e) The Special Counsel will transmit a copy of the agency head's report to the party who made the disclosure to the Special Counsel, except when the report includes evidence of criminal violations referred to the Attorney General.

(f) Any report required under this section will be transmitted by the Special Counsel to the Congress and to the President, after review to determine whether the findings appear reasonable and if the report meets the requirements of 5 U.S.C. 1206(b)(4). The Special Counsel's evaluation will be included in the transmittal of the report to the Congress and the President.

[44 FR 75918, Dec. 21, 1979, as amended at 47 FR 13362, Mar. 30, 1982]

§ 1252.3 Referral to agency heads under 5 U.S.C. 1206(b)(7).

If the Special Counsel does not require an investigation by the head of the agency, the agency head shall, within a reasonable time (but no later than 60 days) after the information was transmitted to him by the Special Counsel, review the information, make any inquiry necessary, and inform the Special Counsel, in writing, of what action has been or is to be taken and when such action will be completed. The Special Counsel will inform the complainant of the report of the agency head.

§ 1252.4 Failure of agency head to file report pursuant to § 1252.2.

Whenever the Special Counsel does not receive a required report from an agency head within the time specified in the letter of referral, the Special Counsel may transmit a copy of the information which he sent to the agency head to the President and to the Congress, together with a statement noting the failure of the agency head to file the required report.

§ 1252.5 Review of agency report.

Upon receipt of any report of the head of an agency under §1252.2, the Special Counsel shall review the report and determine whether the findings of the head of the agency appear reasonable and whether the agency's report contains the information required.

§ 1252.6 Foreign intelligence or counterintelligence information.

Any disclosure under this part involving foreign intelligence or counterintelligence information, the disclosure of which is specifically prohibited by law or Executive order, shall be transmitted by the Special Counsel to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

PART 1253—FILING OF COMPLAINTS AND ALLEGATIONS

Sec.
1253.1 Place of filing.
1253.2 Form and content.
1253.3 Withdrawal of complaint.
1253.4 Request for stay of personnel action.
1253.5 Disclosure of identity of complainant or whistleblower.

AUTHORITY: 5 U.S.C. 1206(k), sec. 204(g) of Reorganization Plan No. 2 of 1978.

SOURCE: 44 FR 75918, Dec. 21, 1979, unless otherwise noted.

§ 1253.1 Place of filing.

(a) Allegations of prohibited personnel practices or other violations of civil service law within the investigative authority of the Special Counsel described in Part 1251 of this chapter should be submitted to the Special Counsel at the appropriate address listed below:

(1) For the District of Columbia, Maryland, Virginia, West Virginia, Puerto Rico, the Virgin Islands, and overseas areas other than the Pacific Ocean area:

Office of the Special Counsel, 1120 Vermont Avenue NW., Room 818, Washington, DC 20419

(2) For Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee:

Office of the Special Counsel, 1365 Peachtree Street, Room 317, Atlanta, GA 30309

(3) For Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah and Wyoming:

Office of the Special Counsel, 1100 Commerce Street, Room 2B29, Dallas, TX 75242

(4) For Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont and Wisconsin:

Office of the Special Counsel, 325 Chestnut Street, Room 505, Philadelphia, PA 19106

(5) For Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Washington and the Pacific Ocean area:

Office of the Special Counsel, 450 Golden Gate Avenue, Room 11454, P.O. Box 36007, San Francisco, CA 94102

(b) Information evidencing violations of law, rule or regulation or mismanagement, a gross waste of funds, an abuse of authority or a substantial and specific danger to public health or safety, described in Part 1252, of this chapter, should be submitted to the Office of the Special Counsel, 1120 Vermont Avenue, NW., Room 818, Washington, D.C. 20419.

[47 FR 13362, Mar. 30, 1982]

§ 1253.2 Form and content.

(a) Complaints, allegations and information may be submitted in any written form, but should include:

(1) The name and mailing address of the complainant or whistleblower, unless the matter is submitted anonymously;

(2) The department or agency, location and organizational unit complained about;

(3) A concise description of the actions complained about, names and positions of employees who took these actions, if known to the complainant, and dates, preferably in chronological order, together with any documentary evidence the complainant may have;

(4) In the case of any allegation of a prohibited personnel practice, the personnel action, as defined in § 1250.3, that has been taken or is proposed to be taken;

(5) In the case of reprisal for disclosure of information by a whistleblower, the information believed to evidence violation of law, rule, or regulation, mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health or safety and when, to whom, and how or in what form it was disclosed;

(6) In the case of reprisal for exercising appeal rights, the action or specific matter that was appealed or grieved, the procedure involved, dates, and name of official or officer appealed to, and decision on or status of the appeal.

(7) A statement as to whether or not the complainant consents to the Special Counsel revealing the complainant's identity to the agency.

(b) If the complainant or whistleblower does not furnish sufficient information, the Special Counsel may request the complainant to do so before acting on the complaint.

§ 1253.3 Withdrawal of complaint.

A complaint may be withdrawn at any time. However, the Special Counsel may conduct an investigation in the absence of a complaint and withdrawal of a complaint does not necessarily result in termination of the investigation.

§ 1253.4 Request for stay of personnel action.

(a) A request for a stay of personnel action should be submitted to the Special Counsel as early as possible and should include:

(1) Any available documentary evidence of the personnel action taken or to be taken; and

(2) A chronology of facts evidencing a prohibited personnel practice, as defined in § 1250.3 of this subchapter, has occurred or is to be taken.

(b) If possible, the facts supporting a request for a stay of personnel action should be sworn to or affirmed by the complainant.

§ 1253.5 Disclosure of identity of complainant or whistleblower.

(a) The identity of any complainant or whistleblower may not be disclosed without his consent, unless the Special Counsel determines that the disclosure of the identity is necessary in order to carry out his functions.

(b) The Special Counsel will determine to disclose the identity of a comlainant or whistleblower without express consent only if:

(1) It is clear from the submissions of the complainant or whistleblower that his identity has already been disclosed with respect to the matter complained of (*e.g.* where the party has filed a grievance, complaint, or appeal on the matter or reported the matter to the agency inspector general or equivalent official without anonymity), or

(2) Immediate action by the Special Counsel is necessary and there is not sufficient time to secure express consent to disclose identity. In such cases, the complainant or whistleblower will be notified of the disclosure immediately.

PART 1254—PROSECUTIONS

Sec.

1254.1 Complaint.
1254.2 Stay of personnel actions.
1254.3 Enforcement of Board decisions.
1254.4 Petition for withholding order.

Sec.
1254.5 Hearings on complaints filed by the Special Counsel.
1254.6 Dismissal by the Special Counsel.

AUTHORITY: 5 U.S.C. 1206(k); sec. 204(g) of Reorganization Plan No. 2 of 1978.

SOURCE: 44 FR 75919, Dec. 21, 1979, unless otherwise noted.

§ 1254.1 Complaint.

The Special Counsel is authorized to file with the Merit Systems Protection Board, a complaint for disciplinary action against an employee, specifying the law, rule, or regulation violated, together with a statement of supporting facts. The rights of employees against whom complaints are filed are set forth in the Board's regulations (5 CFR 1201.124).

§ 1254.2 Stay of personnel actions.

(a) The Special Counsel may request any member of the Board to order a stay of any personnel action for 15 calendar days if the Special Counsel determines that there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice. The stay shall be effective on order of the Board member or on the fourth calendar day (excluding Saturdays, Sundays, and legal holidays) following submission of the petition to the Board member provided the Board member does not deny the stay within three calendar days of submittal.

(b) The Special Counsel may request any member of the Board to extend the period of any stay for a period of not more than 30 calendar days.

(c) The Special Counsel may request the Board to order a further extension of the stay for such period as the Board considers appropriate.

§ 1254.3 Enforcement of Board decisions.

(a) If the Special Counsel determines that disciplinary action should be taken against an employee for knowing and willful refusal or failure to comply with an order of the Board, he is authorized to file a complaint setting forth the substance of the violation charged with specificity, including a statement of supporting facts, and to file the complaint with the Board.

(b) The complaint, including the statement of supporting facts, must be served upon the employee at the same time it is filed with the Board.

§ 1254.4 Petition for withholding order.

When the Special Counsel determines that a State or local agency has failed to remove an employee after a decision requiring such action by the Merit Systems Protection Board under 5 U.S.C. 1505, or that the employee was reemployed within 18 months in a State or local agency of the same State, the Special Counsel may initiate proceedings for a withholding order as provided under 5 U.S.C. 1506, by filing a petition for a withholding order with an administrative law judge designated by the Board.

§ 1254.5 Hearings on complaints filed by the Special Counsel.

Any employee against whom the Special Counsel presents a complaint to the Merit Systems Protection Board shall, pursuant to the regulations of the Board, have the right to a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer, to be represented by an attorney or other representative, to a hearing before the Board or an administrative law judge designated by the Board, to have a transcript kept of any hearing, to a written decision and reasons therefor, and a copy of any final order on the complaint.

§ 1254.6 Dismissal by the Special Counsel.

The Special Counsel or his designee may, with leave of the Board or administrative law judge, file a dismissal of all or part of a complaint at any time prior to the close of the hearing before the Board or administrative law judge. Prosecution by the Special Counsel with respect to any of the charges so dismissed shall thereupon terminate.

PART 1255—ANCILLARY MATTERS

Subpart A—Discovery

Sec.
1255.1 Subpenas.
1255.2 Testimony and evidence.

Sec.
1255.3 Depositions and interrogatories.
1255.4 Witness fees.

Subpart B—Prohibition on Disciplinary Action During Pendency of Investigation by Special Counsel

1255.5 Prohibition on disciplinary action during pendency of investigation by Special Counsel.

Subpart C—Advisory Opinions; Intervention; Requests to Merit Systems Protection Board to Review of Office of Personnel Management Regulations

1255.6 Advisory opinions.
1255.7 Intervention.
1255.8 Requests to Merit Systems Protection Board to review Office of Personnel Management regulations.

AUTHORITY: 5 U.S.C. 1206(k); sec. 204(g) of Reorganization Plan No. 2 of 1978.

SOURCE: 44 FR 75920, Dec. 21, 1979, unless otherwise noted.

Subpart A—Discovery

§ 1255.1 Subpenas.

(a) The Special Counsel may issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia. A subpoena may be served either in person or by registered or certified mail.

(b) The subpena must be signed by the Special Counsel, or by his designee upon a specific delegation by the Special Counsel. Subpenas may not be signed in blank.

(c) In the case of contumacy or failure to obey a subpena issued by the Special Counsel or his designee, the Special Counsel may request the United States District Court for the judicial district in which the person to whom the subpena is addressed resides, or is served, to issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Upon any failure to obey an order of the court granted pursuant to the application of the Special Counsel, the Special Counsel may request the court to hold the person or persons to whom the order was directed in contempt of court.

(d) Application to a federal court for enforcement of a subpena issued under this section may be made by the Special Counsel or his designee.

[44 FR 75920, Dec. 21, 1979, as amended at 48 FR 45373, Oct. 5, 1983]

§ 1255.2 Testimony and evidence.

(a) Pursuant to Civil Service Rule V (5 CFR 5.4) all officers and employees in the executive branch, or applicants or eligibles for positions therein, shall give to the Special Counsel, or his authorized representative, all information, testimony, and documentary evidence in regard to matters inquired of arising under the laws, rules, and regulations administered by the Special Counsel.

(b) Whenever required by the Special Counsel or his authorized representative, such persons shall subscribe such testimony and make oath or affirmation thereto before an officer authorized by law to administer oaths. Such oath may be administered by any officer or employee of the Office of the Special Counsel authorized to administer such oaths.

§ 1255.3 Depositions and interrogatories.

The Special Counsel may order the taking of depositions and order responses to written interrogatories. Depositions shall be taken before an officer authorized to administer oaths. Reasonable notice shall be given to the person to be deposed concerning the time, place and subject of the deposition. Answers to interrogatories shall be served upon the Special Counsel or his authorized representative within thirty (30) days of the date of receipt of the interrogatories unless an extension of time has been granted by the Special Counsel or his representative.

§ 1255.4 Witness fees.

(a) Except as provided in paragraph (c) of this section, witness fees and mileage allowances shall be paid by the party requesting the witness to appear, or asking for and receiving a subpena requiring the attendance of a witness or the production of documents or other materials, and shall be tendered to the witness or person who is directed to produce documents or other materials along with the subpena, or, if the witness appears voluntarily, at the time of appearance. When the witness is subpenaed or appears at the request of the United States or an officer or agency thereof, fees and mileage need not be tendered with the subpena or prior to the appearance of the witness or production of evidence; payment shall be made by the agency on whose behalf the witness appeared or was subpenaed, upon the certificate of the Special Counsel or his designee that the witness appeared or produced documents or other evidence.

(b) Witness fees and mileage allowances payable under this section shall be the same as those paid subpenaed witness in the courts of the United States, as set forth in section 1821 of title 28, United States Code.

(c) Employees of the Federal Government who appear voluntarily or pursuant to subpena and who appear in official duty status shall not be entitled to any witness fees or mileage allowance (other than that to which they are entitled under the Federal Travel Regulations). All costs relating to federal employee witnesses shall be paid by the agency against whom the complaint or allegation is filed.

Subpart B—Prohibition on Disciplinary Action During Pendency of Investigation by Special Counsel

§ 1255.5 Prohibition on disciplinary action during pendency of investigation by Special Counsel.

During any investigation initiated by the Special Counsel, no disciplinary action shall be taken against any employee for any alleged prohibited activity under investigation or for any related activity, without the express approval of the Special Counsel.

Subpart C—Advisory Opinions; Intervention; Requests to Merit Systems Protection Board to Review of Office of Personnel Management Regulations

§ 1255.6 Advisory opinions.

The Special Counsel is not authorized to issue any advisory opinion concerning any law, rule, or regulation (other than an advisory opinion concerning chapter 15 of title 5, U.S. Code, dealing with political activity of State and local officers and employees, or subchapter III of chapter 73 of title 5, United States Code, dealing with political activity of Federal officers and employees).

§ 1255.7 Intervention.

The Special Counsel may intervene or otherwise participate in any proceeding before the Merit Systems Protection Board.

§ 1255.8 Request to the Merit Systems Protection Board to review Office of Personnel Management regulations.

The Special Counsel may file a written complaint with the Merit Systems Protection Board, requesting the Board to review the validity of any provision of any rule or regulation issued by the Director of the Office of Personnel Management. Such complaint shall specify the manner in which application of specific provisions of the rule or regulation has resulted or will result in causing any employee or agency to take a prohibited personnel practice.

PART 1260—PUBLIC INFORMATION

Sec.

1260.1 Public list.
1260.2 Freedom of Information Act policy.
1260.3 Procedures for obtaining records.
1260.4 Service charge for information.
1260.5 Appeals.
1260.6 Disclosures by authorized official.

Authority: 5 U.S.C. 552.

Source: 44 FR 75921, Dec. 21, 1979, unless otherwise noted.

§ 1260.1 Public list.

A public list of certain noncriminal whistleblower allegations and Special

Counsel findings of violations of law, rule, or regulation, together with reports and certifications by heads of agencies, pursuant to 5 U.S.C. 1206(b)(3) and (c), is available to the public between 8:30 a.m. and 5:00 p.m., weekdays (except legal holidays) in the Office of the Special Counsel, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

[44 FR 75921, Dec. 21, 1979, as amended at 47 FR 13363, Mar. 30, 1982]

§ 1260.2 Freedom of Information Act policy.

Upon receipt by the Office of the Special Counsel of a request for agency records under the Freedom of Information Act (5 U.S.C. 552) that are reasonably described, the records shall be provided promptly unless it is determined that one or more of the exemptions under subsection (b) of that Act should be applied to withhold the records. See Appendix I, Disclosure Policy of the Office of the Special Counsel.

§ 1260.3 Procedures for obtaining records.

Requests for records shall be made in writing. Except in unusual circumstances, a determination shall be made on a request within 10 working days. Requests should be addressed to Office of the Special Counsel at the appropriate address as listed in § 1253.1. Requests must be clearly and prominently marked "Freedom of Information Act Request" on both the envelope and the letter.

[47 FR 26369, June 18, 1982]

§ 1260.4 Service charge for information.

(a) Requests for records of the Office of the Special Counsel are subject to the following fees for search and duplication:

Photocopies per page, $0.25. Manual record search: $2.50 per quarter hour if conducted by a clerical employee; $5.00 per quarter hour if conducted by a professional or managerial employee.

(b) Requests that do not specify that whatever fees are involved shall be acceptable or acceptable up to a designated amount will be deemed not received for purposes of the time limits for a determination until the requester, after being promptly notified of the anticipated fees, agrees to payment.

(c) Records will not be released until the fees have been received unless delayed payment or waiver of fees is authorized in accordance with paragraph (d) of this section.

(d) The Associate or Assistant Special Counsel, Prosecution Division, or the Associate or Assistant Special Counsel in a field office may permit delayed payment of fees or waiver of fees in exceptional circumstances when he determines good cause exists for delaying payment or that a waiver of fees will primarily benefit the general public.

[44 FR 75921, Dec. 21, 1979, as amended at 47 FR 26369, June 18, 1982]

§ 1260.5 Appeals.

Any denial, in whole or in part, of a request for records of the Office of the Special Counsel shall advise the requester of his right to appeal the denial to the Special Counsel or his designee. The requester shall submit his appeal in writing within 30 days of the denial. The appeal shall be addressed to the Special Counsel at 1120 Vermont Avenue, NW., Washington, D.C. 20419. Except in unusual circumstances, the Special Counsel or his designee shall make a determination on the appeal within 20 working days after it is received. When a request is denied on appeal, the requester shall be advised of his right to seek judicial review.

[47 FR 26369, June 18, 1982]

§ 1260.6 Disclosures by authorized official.

No employee or former employee of the Office of the Special Counsel shall, in response to a demand of a court or other authority, produce or disclose any information or records acquired as part of the performance of his official duties or because of his official status without the prior approval of the appropriate offical of the Office of the Special Counsel. This section does not apply in cases where the Government is a party.

PART 1261—PRIVACY

Sec.
1261.1 Records maintained on individuals.
1261.2 Access to records and identification.
1261.3 Medical records.
1261.4 Requests for amendment of records.
1261.5 Appeals.
1261.6 Exemptions.
Appendix I to Part 1261—Disclosure Policy of the Office of the Special Counsel

Authority: 5 U.S.C. 552a.

Source: 44 FR 75921, Dec. 21, 1979, unless otherwise noted.

§ 1261.1 Records maintained on individuals.

Information on individuals that are maintained in any group or system of records by the Office of the Special Counsel and which are retrieved by the name of the individual or some identifying particular assigned to the individual, is subject to the Privacy Act (5 U.S.C. 552a). The terms used in this part that are defined in that section shall have the meanings set forth therein.

§ 1261.2 Access to records and identification.

(a) Individuals may request access to records pertaining to them that are maintained as described in § 1261.1 by addressing an inquiry to the Office of the Special Counsel either by mail or by appearing in person at the offices of the Special Counsel at 1120 Vermont Avenue, NW., Washington, D.C. 20419, during business hours on a regular business day. Requests in writing should be clearly and prominently marked "Privacy Act Request". Requests for copies of records shall be subject to duplication fees set forth in § 1260.4 of this subchapter.

(b) Individuals making a request in person shall be required to present satisfactory proof of identity, preferably a document bearing the individual's photograph. Requests by mail or submitted other than in person should contain sufficient information to enable the Office of the Special Counsel to determine that the requester and the subject of the record are one and the same. To assist in this process, individuals should submit their name and address, date and place of birth, social security number, and any other known identifying information such as an agency file number or identification number and a description of the circumstances under which the records were compiled.

[44 FR 75921, Dec. 21, 1979, as amended at 47 FR 13363, Mar. 30, 1982]

§ 1261.3 Medical records.

When a request for access involves medical records that are not otherwise exempt from disclosure, the requesting individual may be advised, if it is deemed necessary, that the records will be provided only to a physician designated in writing by the individual. Upon receipt of the designation, the physician will be permitted to review the records or to receive copies by mail upon proper verification of identity.

§ 1261.4 Requests for amendment of records.

Individuals may request amendment of records pertaining to them that are subject to this part. Requests should be addressed, in writing, to the Special Counsel and be clearly and prominently marked "Privacy Act Request". Requests for amendment should include identification of the records together with a statement of the basis for the requested amendment and all available supporting documents and materials. Requests for amendment shall be acknowledged not later than ten (10) days (excluding Saturdays, Sundays, and legal holidays) after receipt and a determination on the request shall be made promptly.

§ 1261.5 Appeals.

When a request for access or amendment has been denied, in whole or in part, the requester shall be advised of his right to appeal to the Special Counsel or his designee. The requester shall submit his appeal in writing within 30 days of the denial. A final determination on the appeal shall be issued within 30 days (excluding Saturdays, Sundays and legal holidays) after receipt. Where unusual circumstances prevent a determination within that time period, the time for a determination may be extended an additional 30 working days after the requesting individual has been advised in writing of the reasons for the extension and the estimated date a determination will be made. Where the final determination denies a request for amendment, the requesting individual shall be notified of his right to file a concise statement of reasons for disagreeing with the final determination. A copy of the statement shall be appended to the disputed record and provided to persons to whom the record is disclosed and to prior known recipients of the record. The Office of the Special Counsel may also attach to the statement a concise account of its reasons for not making the amendments requested. The final determination shall contain a notice of the right to judicial review.

[47 FR 26370, June 18, 1982]

§ 1261.6 Exemptions.

The Office of the Special Counsel may claim exemptions from the provisions of the Privacy Act at subsections (c)(3) and (d) as permitted by subsection (k) for records subject to the Act that fall within the category of investigatory material described in paragraphs (2) and (5) and testing or examination material described in paragraph (6) of that subsection. The exemptions for investigatory material are necessary to prevent frustration of inquiries into allegations of prohibited personnel practices or political activity and to protect identities of confidential sources of information. The exemption for testing or examination material is necessary to prevent the disclosure of information which would potentially give an individual an unfair competitive advantage or diminish the utility of established examination procedures. The Office of the Special Counsel also reserves the rignt to assert exemptions for records received from another agency that could be properly claimed by that agency in responding to a request and the Office of the Special Counsel may refuse access to information compiled in reasonable anticipation of a civil action or proceeding.

APPENDIX I TO PART 1261—DISCLOSURE POLICY OF THE OFFICE OF THE SPECIAL COUNSEL

A. *General Statement of Policy.* The purpose of this statement is to express the policies of the Office of the Special Counsel regarding the disclosure of information about cases handled by the office in order to both protect the rights of individuals involved and meet the legitimate informational needs of the public through responsible disclosure.

The Office of the Special Counsel has broad statutory authority to receive and investigate allegations of prohibited personnel practices and certain disclosures of information ("whistleblowing"). To carry out these responsibilities, the identity of persons who provide information and cooperate during an investigation must be protected. Unless the Special Counsel can be assured of a free flow of information from complainants, witnesses, and agencies, the investigative and enforcement functions of the Office of the Special Counsel cannot be discharged in an effective and timely manner. If complainants and witnesses are subjected to reprisal, intimidation, or coercion, they may refuse to come forward with complaints and be hesitant to cooperate.

In the same vein, unless agency management officials feel confident that they will not be subjected to embarrassment and unfair publicity based on unwarranted disclosure of complaints and charges, cooperation from agencies may be limited to only that required by law.

At the same time, complainants and the Congress, as well as interested members of the public and press, should be kept fully informed about activities of the Special Counsel and the disposition of matters brought to his attention. The legislation creating the Office of the Special Counsel contains specific statutory mechanisms for disclosure of information to Congress, complainants, and the public. The legislation also contains restrictions on disclosure of information.

Where there appears to be a conflict between the enabling legislation of the Office of the Special Counsel and other statutes governing disclosure and nondisclosure of information, it shall be the policy of the Special Counsel to favor the former where such an interpretation is necessary to carry out its investigative and enforcement functions absent a well-defined and overriding public interest.

B. *Protecting the Identity of Complainants.* The Special Counsel is precluded from disclosing the identity of a complainant without his consent unless it is determined that disclosure is necessary in order to carry out the Special Counsel's functions. Where circumstances surrounding an investigation create a likelihood that the identity of the complainant may become known, the Special Counsel will weigh the public interest in proceeding with the investigation (based on the seriousness of the charges involved and the likelihood of obtaining corrective action) against the possibility of harm to the complainant arising from disclosure of his identity. Except where it would jeopardize the likelihood of success in investigation and enforcement, the complainant will be notified when disclosure of the complainant's identity appears imminent.

C. *Protecting the identity of Witnesses.* It shall be the policy of the Special Counsel to protect the identity of witnesses and sources of information who cooperate during an investigation. However, witnesses who provide affidavits or sworn statements will ordinarily be advised that the affidavit or statement is given without a pledge of confidentiality to the extent that it may be used in a proceeding or for official action arising from the investigation. Agency officials and other interested persons shall not, as a matter of right, be given access to statements of witnesses or information from sources collected by the Special Counsel during an investigation.

D. *Protecting the Privacy of Persons Named in an Investigation.* While an investigation is pending, disclosure of the identity of persons who are being investigated shall be limited to disclosures necessary to proceed with the investigation. When an investigation has been terminated, disclosure of information that would reveal the identity of persons associated with the investigation will be based on a determination of how the public interest would be served by disclosure when balanced against the invasion of personal privacy involved. Unless and until an agency official or employee is formally charged with a violation, the focus of the investigation, for disclosure purposes, shall be on prohibited personnel practices or violations of law of the agency concerned. The identity of a person together with the nature of the charges will be revealed when he is made the subject of a written complaint by the Special Counsel or an agency charging violations of law or prohibited personnel practices.

E. *Access to Information by the Complainant.* The Special Counsel will take reasonable steps to assure that a complainant is advised of the status of an investigation and is given the opportunity to provide information relevant to the investigation. When an investigation is terminated by the Special Counsel, the complainant whose allegation led to the investigation will be advised in writing why the investigation was terminated and the reasons for termination. Where the information provided results in an agency report at the direction of the Special Counsel, the report will be transmitted to the complainant, except when it contains evidence of a criminal violation or when disclosure of the information involved is specifically prohibited by law.

If the information provided by the complainant evidences a violation and the Special Counsel transmits the information *to* the agency head but does not require an investigation, the Special Counsel will inform the complainant in writing of the matters reported *by* the agency head.

F. *Access to Information by Employees Subjected to Disciplinary Action.* When the Special Counsel determines that disciplinary action should be taken against any employee and has prepared and presented a complaint against the employee together with a statement of supporting facts to the employee and the Merit Systems Protection Board, the employee shall be entitled to review the documents and records relied upon to support the disciplinary action.

Access to the identity of a complainant or sources of information consulted during the investigation leading to the disciplinary action will not routinely be made available. Where the circumstances surrounding the proposal for disciplinary action and the information relied upon to support the complaint make it apparent that the employee should be entitled to such information as a matter of due process, access to the identity of the complainant or sources of information will be granted, as necessary, to meet this standard after the complaint against the employee is served on the employee and Merit Systems Protection Board.

G. *Disclosure of Information to Congress.* By statute, when the Special Counsel requires an agency to conduct an investigation and submit a written report within 60 days after a determination that there is a substantial likelihood of prohibited matters within its authority, the report shall be submitted to the Congress, to the President, and to the Special Counsel for transmittal to the complainant.

Agencies that are directed to submit a report under this authority shall transmit the report directly to the President of the Senate and the Speaker of the House of Representatives to satisfy the reporting requirement to Congress.

When any Member of Congress requests access to records or reports prepared by the Office of the Special Counsel or at its direction, and disclosure is not prohibited by law or Executive order, the records or reports requested, depending on the source of the request, shall be transmitted to the oversight committee for the Office of the Special Counsel in the House of Representatives or the oversight committee for the

Office of the Special Counsel in the Senate, to be transmitted to the Member.

H. *Disclosure of Information Pertaining to a Pending Investigation.* While an investigation is pending, the Special Counsel will disclose the following information to a member of the public, generally only upon a written request, except where to do so would interfere with enforcement proceedings, constitute an unwarranted invasion of personal privacy or disclose the identity of the complainant:

(1) Confirmation that an investigation of the matter described by the requester is pending, including the name and location of the agency or agencies involved;

(2) The nature of the matters under investigation;

(3) A description of any formal action taken by the Special Counsel.

Generally, any request for access to records or documents pertaining to an investigation will be denied while the investigation is pending.

I. *Public Disclosure of Noncriminal Matters.* In the public interest, the Office of the Special Counsel has statutory authority to make available to the public a list of noncriminal matters referred to heads of agencies together with the reports and certifications by heads of agencies specified by statute.

The list available to the public shall contain the following information in chronoligical sequence:

(1) The nature of the matter;

(2) The name and location of the agency involved;

(3) The disposition of the matter, including a description of any corrective action ordered;

(4) The names and position titles of any agency officals or employees disciplined by adverse action or by action of the Special Counsel, together with the nature of the action arising from the matter.

The information contained in the list together with any related reports or certifications shall be made available within 10 calendar days after final action by the Special Counsel in the matter.

J. *Control of Records.* Records, reports and related materials prepared by or submitted to the Office of the Special Counsel shall be subject to the exclusive control of the Office of the Special Counsel for purposes of disclosure. Any request for access to such records or reports shall be referred to the Special Counsel. When the request for access to reports or records prepared by agencies involves information that may be lawfully protected from disclosure, the Special Counsel will, where practicable, consult with the agency involved. Requests for access to reports or records of an agency in the custody of the Office of the Special Counsel, but not under its control as described above, shall be referred to the agency concerned.

CHAPTER III—OFFICE OF MANAGEMENT AND BUDGET

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SUBCHAPTER A—ADMINISTRATIVE PROCEDURES

PART 1300—STANDARDS OF CONDUCT

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APPENDIX A—HOUSE CONCURRENT RESOLUTION 175, 85th CONGRESS, 2D SESSION

AUTHORITY: E.O. 11222, 30 FR 6469, May 8, 1965, 3 CFR, 1965 Comp., P. 306; 5 CFR 735.104.

SOURCE: 41 FR 24682, June 17, 1976, unless otherwise noted.

§ 1300.735-1 Purpose.

(a) The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by regular employees and special Government employees is essential to assure the proper performance of Government business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of regular employees and special Government employees through informed judgment is indispensable to the maintenance of these standards.

(b) This part is intended to foster the foregoing concepts. It is issued in compliance with the requirements of Executive Order No. 11222 of May 8, 1965, and is based upon the provisions of that order, the regulations of the Civil Service Commission issued thereunder (Part 735 of this title), and the statutes cited elsewhere in this part.

§ 1300.735-2 Definitions.

(a) For the purposes of this part, the terms "employee," "regular employee," and "regular Government employee" mean any officer or employee of the Office of Management and Budget except a special Government employee.

(b) The term "special Government employee" means an officer or employee who is retained, designated, appointed, or employed by the Office of Management and Budget to perform with or without compensation, for not more than 130 days during any period of 365 consecutive days temporary duties either on a full-time or intermittent basis.

(c) The term "person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

§ 1300.735-3 Special Government employees.

Except where specifically provided otherwise, or where limited in terms or by the context to regular employees or regular Government employees, all provisions of this part relating to employees are applicable also to special Government employees.

§ 1300.735-4 General standards of conduct.

(a) All employees shall conduct themselves on the job in such a manner that the work of the Office is efficiently accomplished and courtesy, consideration, and promptness are observed in dealing with others.

(b) All employees shall conduct themselves off the job in such a manner as not to reflect adversely upon the Office or the Federal service.

(c) In all circumstances employees shall conduct themselves so as to exemplify the highest standards of integrity. Executive Order 11222 and Civil Service regulations provide that an employee shall avoid any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making a Government decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

§ 1300.735-5 Required employee notification.

(a) The Assistant to the Director for Administration shall distribute copies of this part to each regular employee and special Government employee within 30 days of its publication. In the case of a new regular employee or special Government employee entering on duty after the date of such distribution, a copy shall be furnished at the time of entrance on duty. All regular and special Government employees shall familiarize themselves with the contents of this part.

(b) Copies of the Executive order, regulations, and statutes referred to in § 1300.735-1, together with various explanatory materials, are available for inspection in the Personnel Office at any time during regular business hours. Employees are encouraged to consult these basic materials in any case of doubt as to the proper application or interpretation of the provisions of this part.

(c) Attention of all employees is directed to House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. 312, the "Code of Ethics for Government Service," which is attached to this part as Appendix A. (See also § 1300.735-21.)

§ 1300.735-6 Interpretation, advisory services, and counseling.

(a) The General Counsel is appointed as the Office's designee to the Civil Service Commission to interpret matters concerning this part. The General Counsel may, in this capacity, appoint one or more assistants, to serve as counselors.

(b) The Assistant to the Director for Administration shall notify all employees and special Government employees annually of the availability of counseling services. In the case of a new employee or special Government employee appointed after the date of such notification, notification shall be given at the time of entrance on duty.

§ 1300.735-7 Disciplinary action.

(a) A violation of any provision of this part by an employee may be cause for appropriate disciplinary action which may be in addition to any penalties prescribed by law. (As to remedial action in cases where an employee's financial interests result in a conflict or apparent conflict of interest, see § 1300.735-26.)

(b) Any disciplinary or remedial action taken pursuant to this part shall be effected in accordance with any applicable laws, Executive orders, or regulations.

§ 1300.735-8 Conflicts of interest, actual and apparent.

(a) A conflict of interest may exist whenever an employee has a substantial personal or private interest in a matter which involves his or her duties and responsibilities as an employee. The maintenance of public confidence in Government clearly demands that an employee take no action which would constitute the use of an official position to advance personal or private interests. It is equally important that each employee avoid becoming involved in situations which present the possibility, or even the appearance, that official position might be used to private advantage to the employee or others through association with the employee.

(b) Neither the pertinent statutes nor the standards of conduct prescribed in this part are to be regarded as exhaustive. Each employee must, in each instance involving a personal or private interest in a matter which also involves his or her duties and responsibilities as an employee, make certain that his or her actions do not have the effect or the appearance of the use of official position for the furtherance of personal or family interests or those of personal or business associates.

(c) The principal statutory provisions relating to bribery, graft, and conflicts of interest are contained in Chapter 11 of the Criminal Code, 18 U.S.C. 201-224. Severe penalties are provided for violations, including fine, imprisonment, dismissal from office, and disqualification from holding any office of honor, trust, or profit with the United States Government.

§ 1300.735-9 Disqualification because of private financial interests.

(a) Unless authorized to do so as provided hereafter in this section, no employee shall participate personally and substantially as a Government employee in a particular matter in which he or she has a financial interest. (18 U.S.C. 208.)

(1) For the purposes of this section—

(i) An employee participates personally and substantially in a particular matter through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise;

(ii) A particular matter is a judicial or other proceeding, application, request for ruling or other determination, contract, grant, claim, controversy, charge, accusation, arrest, or other particular activity; and

(iii) A financial interest is the material interest or entitlement of the employee or his or her spouse, minor child, partner, or an organization in which he or she is serving as officer, director, trustee, partner or employee, or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment.

(b) An employee who has a financial interest (other than a financial interest exempted under paragraph (c) of this section) in a particular matter which is within the scope of his or her official duties shall make a full disclosure of that interest in writing to the Assistant to the Director for Administration. The employee shall not participate in any such matter unless he or she receives a written determination by the Director pursuant to section 208 of title 18, United States Code, that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of such employee.

(c) The financial interests described in this paragraph are hereby exempted, pursuant to the provisions of section 208 of title 18, United States Code, from the restrictions of paragraph (a) of this section and of section 208 of title 18 (but not the other requirements of this part) as being too remote or inconsequential to affect the integrity of an employee's services in a matter:

(1) Stocks or bonds in a mutual fund or investment company, provided that the fair value of such stock or bond holding does not exceed 1 percent of the value of the reported assets of the mutual fund or investment company. This exemption applies only where the assets of the fund or company are diversified; it does not apply where the fund or company advertises that it specializes in a particular industry or commodity.

§ 1300.735-10 Additional prohibitions—regular Government employees.

(a) In addition to the disqualifications described in § 1300.735-9, a regular Government employee may not:

(1) Except in the discharge of official duties, represent any one else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another (18 U.S.C. 203 and 205).

(2) After Government employment has ended, ever represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which the employee participated personally and substantially for the Government (18 U.S.C. 207(a)).

(3) For 1 year after his or her Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of the employee's official responsibility during the last year of Government service (18 U.S.C. 207(b)). (This temporary restraint is permanent if the matter is one in which he or she participated personally and substantially. See paragraph (a)(2) of this section.)

(4) Receive any salary, or supplementation of Government salary, from a private source as compensation for services to the Government (18 U.S.C. 209, see also § 1300.735–13).

(b) Exemptions or exceptions from the prohibitions described in paragraph (a) of this section are permitted under certain circumstances. For the method of obtaining such exemptions or exceptions, see paragraph (d) of § 1300.735–12.

§ 1300.735–11 Additional prohibitions—special Government employees.

(a) In addition to the disqualification described in § 1300.735–9, a special Government employee is subject to the following major prohibitions:

(1) He or she may not, except in the discharge of official duties—

(i) Represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest and in which he or she has at any time participated personally and substantially for the Government (18 U.S.C. 203 and 205), or

(ii) Represent anyone else in a matter pending before the Office unless he or she served there no more than 60 days during the previous 365 days (18 U.S.C. 203 and 205). He or she is bound by this restraint despite the fact that the matter is not one in which he or she has ever participated personally and substantially.

(2) He or she may not, after his or her Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he or she participated personally and substantially for the Government (18 U.S.C. 207(a)).

(3) He or she may not, for 1 year after his or her Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his or her official responsibility during the last year of his or her Government service (18 U.S.C. 207(b)). (This temporary restraint is permanent if the matter is one in which he or she participated personally and substantially. See paragraph (a)(2) of this section.)

(b) Exemptions or exceptions from the prohibitions described in paragraph (a) of this section are permitted under certain circumstances; for the method of obtaining such exemptions or exceptions, see paragraph (d) of § 1300.735–12.

§ 1300.735–12 Exemptions and exceptions from prohibitions of conflict of interest statutes.

(a) Nothing in this part shall be deemed to prohibit an employee, if it is not otherwise inconsistent with the faithful performance of his or her duties, from acting without compensation, as agent or attorney for any person in a disciplinary, loyalty, or other Federal personnel administration proceeding involving such person.

(b) Nothing in this part shall be deemed to prohibit an employee from acting, with or without compensation, as agent or attorney for his or her parents, spouse, child, or any person for whom, or for any estate for which, he or she is serving as guardian, executor, administrator, trustee, or other personal fiduciary, except in those matters in which he or she has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his or her official responsibility, as defined in section 202(b) of title 18 of the United States Code.

(c) Nothing in this part shall be deemed to prohibit an employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

(d) In addition to the exemptions and exceptions described in this section and in § 1300.735-9, the conflict of interest statutes permit certain exemptions and exceptions in specific circumstances. The procedure for effecting such exemptions or exceptions is as follows:

(1) Any regular employee or special Government employee who desires approval of certification of his or her activities as provided for by section 205 of title 18, U.S. Code, shall make application therefor in writing to the Assistant to the Director for Administration.

(2) A former employee, including a former special Government employee, who desires certification with regard to his or her activities under section 207 of title 18, U.S. Code, shall make application therefor in writing to the Assistant to the Director for Administration.

(3) The Assistant to the Director for Administration shall report promptly to the Director, through the Deputy Director, all matters reported to him or her under this part which require consideration of approvals, certifications, or determinations provided for in sections 205, 207, or 208 of title 18, U.S. Code, except that approvals requested under the provisions of paragraph (b) of this section may be granted by the Assistant to the Director for Administration without reference to anyone else.

§ 1300.735-13 Salary of employees payable only by United States.

(a) No employee, other than a special Government employee or an employee serving without compensation, shall receive any salary, or any contribution to or supplementation of salary, as compensation for his or her services as a Government employee, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality. (18 U.S.C. 209, see also § 1300.735-10(4) and 11(2).)

(b) Nothing in this part shall be deemed to prohibit an employee from continuing to participate in a bona fide pension, retirement, group life, health, or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer, nor from accepting contributions, awards, or other expenses under the terms of the Government Employees Training Act, 5 U.S.C. 2301-2319.

§ 1300.735-14 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section and in § 1300.735-15, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Office or any other agency with which the employee has occasion to work in the conduct of his or her official duties.

(2) Has interests which may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) Notwithstanding paragraph (a) of this section, an employee may:

(1) Accept a gift, gratuity, favor, entertainment, loan, or other thing of monetary value from a friend, parent, spouse, child, or other close relative when the circumstances make it clear that the family or personal relationships involved are the motivating factors;

(2) Accept food or refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;

(3) Accept loans from banks or other financial institutions on customary terms to finance proper or usual activities of employees, such as home mortgage loans; and

(4) Accept unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, or other items of nominal intrinsic value.

(c) An employee shall not solicit contributions from another employee for a gift to an employee in a superior official position. An employee in a superior official position shall not accept a gift presented as a contribution from employees receiving less salary than himself. An employee shall not make a donation as a gift to an employee in a superior official position. (5 U.S.C. 7351.) However, this paragraph does not prohibit a voluntary donation or acceptance of a gift of nominal value on a special occasion such as marriage, illness, or retirement.

(d) The Constitution (Art. 1, sec. 9, par. 8) prohibits acceptance from foreign governments, except with the consent of Congress, of any emolument, office, or title. The Congress has provided that, except in the case of certain gifts of minimal value and specified military decorations, all such presents, decorations, and other things shall be tendered to the State Department for use and disposal as property of the United States (5 U.S.C. 7342). Any such gift or thing which cannot appropriately be refused shall be submitted to the Assistant to the Director for Administration for transmittal to the State Department.

§ 1300.735-15 Outside employment and other activities.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his Government employment. Incompatible activities include, but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expenses, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, a conflict of interest; or

(2) Outside employment which tends to impair the employee's mental or physical capacity to perform his Government duties and responsibilities in an acceptable manner.

(b) An employee who intends to engage in outside employment shall obtain the approval, through the head of his or her office or division, of the Assistant to the Director for Administration. A record of each approval under this paragraph shall be filed in the employee's official personnel folder.

(c) Within the limitations imposed by this section, employees are encouraged to engage in teaching, lecturing, and writing. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, making speeches, or writing (including lecturing or writing for the purpose of special preparation of a person or class of persons for an examination of the Civil Service Commission or the Board of Examiners for the Foreign Service) that is dependent on information obtained as a result of his or her Government employment, except when that information has been made available to the general public or will be made available on request, or when the Deputy Director gives written authorization for the use of nonpublic information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of Executive Order No. 11222 of May 8, 1965, shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of his or her agency, or which draws substantially on official data or ideas which have not become part of the body of public information.

(d) An employee shall not engage in outside employment under a State or local government, except in accordance with applicable regulations of the Civil Service Commission (Title 5, Chapter I, Part 734 of the Code of Federal Regulations).

(e) Neither this section nor § 1300.735-14 precludes an employee from:

(1) Acceptance of payments from tax exempt organizations pursuant to the provisions of 5 U.S.C. 4111, or receipt of reimbursement for bona fide expenses for travel and subsistence incurred while in a non-duty status and for which no Government payment or reimbursement is made. However, an employee may not be reimbursed, and payment may not be made on his or her behalf, for excessive personal benefits.

(2) Participation in the activities of national or State political parties not proscribed by law. (See paragraph (o) of § 1300.735-22 regarding proscribed political activities.)

(3) Participation in the affairs of, or acceptance of an award for a meritorious public contribution or achievement given by, a charitable, religious, professional, social, fraternal, nonprofit educational or recreational, public service, or civic organization.

(f) This section does not apply to special Government employees, who are subject to the provisions of § 1300.735-22.

§ 1300.735-16 Financial interests.

(a) An employee may not have financial interests which—

(1) Constitute a substantial personal or private interest in a matter which involves his or her duties and responsibilities as an employee; or

(2) Are entered into in reliance upon, or as a result of, information obtained through his or her employment; or

(3) Result from active and continuous trading (as distinguished from the making of bona fide investments) which is conducted on such a scale as to interfere with the proper performance of his or her duties.

(b) Aside from the restrictions prescribed or cited in this part, employees are free to engage in lawful financial transactions to the same extent as private citizens. Employees should be aware that the financial interests of their spouse or minor children and persons related by blood or law who are full-time residents of their households may be regarded, for the purposes of this section, as financial interests of the employees themselves.

(c) This section does not apply to special Government employees, who are subject to the provisions of § 1300.735-22.

§ 1300.735-17 Use of Government property.

An employee shall not directly or indirectly use or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him or her.

§ 1300.735-18 Misuse of information.

For the purpose of furthering a private interest, an employee shall not, except as provided in paragraph (b) of § 1300.735-15, directly or indirectly use, or allow the use of, official information obtained through or in connection with his or her Government employment which has not been made available to the general public.

§ 1300.735-19 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, or one imposed by law such a federal, state or local taxes, and "in a proper and timely manner" means in a manner which the Office determines does not, under the circumstances, reflect adversely on the Government as his or her employer. In the event of dispute between an employee and an alleged creditor, this section does not require the Office to determine the validity or amount of the disputed debt.

§ 1300.735-20 Gambling, betting, and lotteries.

An employee shall not participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity, including the operations of gambling devices, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude solicitations by employee organizations when approved by the Office under section 3 of Executive Order No. 10927, or other similar Office-approved activities.

§ 1300.735-21 Miscellaneous statutory provisions.

Each employee shall become acquainted with each statute that relates to his or her ethical and other conduct as an employee of the Office and of the Government. Particular attention is directed to the following statutory provisions:

(a) Chapter 11 of title 18, U.S. Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned (see §§ 1300.735-9, 1300.735-10, and 1300.735-11).

(b) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(c) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(d) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783) and (2) the disclosure of confidential information (18 U.S.C. 1905).

(e) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(f) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(g) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(h) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(i) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(j) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(k) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(l) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(m) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(n) The prohibitions against proscribed political activities in subchapter III of chapter 73 of title 5, United States Code, and 18 U.S.C. 602, 603, 607, and 608.

(o) The prohibition against an employee acting as the agent of a foreign principal under the Foreign Agents Registration Act (18 U.S.C. 219).

(p) The prohibition against engaging in any manner in riots and civil disorders; and banning persons convicted of such offenses from employment in the Government of the United States or of the District of Columbia for five (5) years from the date of said conviction (5 U.S.C. 7313).

(q) The prohibition against unlawfully and unreasonably withholding information clearly required to be released pursuant to the Freedom of Information Act (5 U.S.C. 552(a)(4)(F)).

(r) The prohibition against willfully violating the Privacy Act of 1974. (5 U.S.C. 552a(i)(1), see also § 1300.735-27.)

§ 1300.735-22 Conduct and responsibilities of special Government employees.

(a) A special Government employee shall not use his or her Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself, herself, or another person, particularly one with whom the special Government employee has family, business, or financial ties.

(b) A special Government employee shall not use inside information obtained as a result of his or her Government employment for a private gain for himself, herself or another person, particularly one with whom he or she has family, business, or financial ties.

For the purposes of this section, "inside information" means information obtained under Government authority which has not become part of the body of public information.

(c) A special Government employee who engages in teaching, lecturing, or writing, whether for or without compensation, shall not for such purposes make use of information obtained as a result of his or her Government employment, except when that information has been made available to the general public or will be made available on request, or when the Deputy Director gives written authorization for the use of nonpublic information on the basis that such use is in the public interest.

(d) A special Government employee shall not use his or her Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or herself or another person, particularly one with whom the employee has family, business, or financial ties.

(e) Except as provided in paragraph (f) of this section, a special Government employee, while so employed or in connection with employment, shall not receive or solicit from a person having business with the agency anything of value as a gift, gratuity, loan, entertainment, or favor for himself, herself, or another person, particularly one with whom he has family, business, or financial ties.

(f) Notwithstanding paragraph (e) of this section, a special Government employee shall be allowed the same latitude as is authorized for regular Government employees by paragraph (b) of § 1300.735-14.

(g) Attention of special Government employees is directed to the provisions of § 1300.735-3 (making the provisions of this part generally applicable to their activities); as modified by § 1300.735-11.

§ 1300.735-23 Reporting possible criminal conduct of other employees.

In the event an employee of the Office, in the course of his or her duties, obtains information concerning possible criminal conduct in violation of title 18, United States Code, by other Government employees or officers, such information should be reported expeditiously to the Attorney General (see 28 U.S.C. 535). To assure compliance with the law, to fulfill the Office's responsibilities, and to maintain public confidence, the following guidance is provided concerning the disposition of such information.

(a) Employees should report such information without delay through normal channels to—

(1) The Assistant to the Director for Administration of the information relates to an employee of the Office; or

(2) The appropriate Associate Director if the information relates to an employee of another agency.

(b) The Assistant to the Director for Administration or any Associate Director who receives such information should, after any necessary consultation with the General Counsel, submit the matter to the Director or the Deputy Director with recommendations whether—

(1) A report should be made to the Attorney General;

(2) A report should be made to the appropriate officials of any other agency; and

(3) Whether any other action should be taken.

(c) Except as specifically authorized by the Director or Deputy Director, Office employees shall not conduct investigations of allegations of misconduct on the part of officers or employees of any other department, agency, or instrumentality of the United States.

§ 1300.735-24 Reporting of employment and financial interests—regular Government employees.

(a) Reports will be submitted on a form made available by the Assistant to the Director for Administration, setting forth the information specified hereafter in this section. Such statements shall be submitted to the head of the office or division concerned, except that heads of offices and divisions and employees in the Office of the Director shall submit such statements to the Deputy Director or such other official as the Deputy Director may designate. After review by the head of the division, or equivalent, the statements shall be forwarded, through the appropriate Associate or Assistant Director, to the Assistant to the Director for Administration (see paragraph (h) of this section).

(1) A list of the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational or other institutions with or in which he or she, his or her spouse, minor child, or other member of his or her immediate household has—

(i) Any connection as an employee, officer, owner, director, member, trustee, partner, adviser, or consultant; or

(ii) Any continuing financial interest, through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association; or

(iii) Any financial interest (except those described in paragraph (c) of § 1300.735-9) through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts. ("Shares" in savings and loan associations which are in the nature of savings deposits need not be reported under this section.)

(2) A list of the names of his or her creditors and the creditors of his or her spouse, minor child, or other members of his or her immediate household, other than those creditors to whom they may be indebted by reason of a mortgage on property which he or she occupies as a personal residence or to whom they may be indebted for current and ordinary household and living expenses such as those incurred for household furnishings, an automobile, education, vacations, or the like.

(3) A list of his or her interests and those of his or her spouse, minor child, or other member of his or her immediate household in real property or rights in lands, other than property which he or she occupies as a personal residence.

(b) For the purpose of this section "member of his or her immediate household" means a full-time resident of the employee's household who is related to the employee by blood or law.

(c) Each employee designated in paragraph (d) of this section who enters on duty after March 31, 1976, shall submit such statement not later than 30 days after the date of entrance on duty.

(d) Statements of employment and financial interests are required of the following:

(1) Employees listed in the Executive Schedule, except a Presidential appointee required to file a statement of financial interests under section 401 of Executive Order No. 11222 of May 8, 1965.

(2) Employees in classified positions of grade GS-15 or above.

(e) Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of title 18, United States Code, or of the regulations in this part.

(f) If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit the information in his or her behalf.

(g) Paragraph (a) of this section does not require an employee to submit any information relating to his or her connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

(h) The Office shall hold each statement of employment and financial interests in confidence pursuant to the filing, recording, notification requirements, and other requisites of the Privacy Act of 1974 (Pub. L. 93-579). The official to whom any such statement is submitted shall transmit it to the Assistant to the Director for Administration with appropriate notation of any indication of a conflict of interest. The Assistant to the Director for Administration shal retain such statements in confidence and shall not allow access to, or allow information to be disclosed from, any such statement except as may be necessary to carry out the purposes of this part. The Office may not disclose information from a statement except as the Civil Service Commission or the Director may determine for good cause shown.

(i) The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement by an employee does not permit him or her or any other person to participate in a matter in which his or her or the other person's participation is prohibited by law, order, or regulation.

(j) This section does not apply to special Government employees, who are subject to the provisions of § 1300.735-25.

(k) Employees in positions that meet the criteria in paragraph (d)(2) of this section may be excluded from the reporting requirement when the Director determines that (1) the duties of a position are such that the likelihood of the incumbent's involvement in a conflict-of-interest situation is remote; or (2) the duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government. Application for such a determination shall be made in writing to the Director through the head of the employee's office or division, except that employees in the Office of the Director shall make such applications through the Deputy Director.

(l) The Office's grievance procedure is available for review of a complaint by an employee that his or her position has been improperly included under paragraph (d) of this section as one requiring submission of a statement of employment and financial interests.

§ 1300.735-25 Reporting of employment and financial interests—special Government employees.

(a) A special Government employee shall submit to the Assistant to the Director for Administration a statement of employment and financial interests which discloses (1) all current Federal Government employment, (2) the names of all corporations, research organizations, and educational or other institutions in or for which he or she is an employee, officer, member, owner, trustee, director, adviser, or consultant, with or without compensation, (3) the names of all corporations in which he or she holds stocks or bonds, and (4) the names of all partnerships in which he or she is engaged.

(b) A statement required under this section shall be submitted at the time of employment on a form supplied by the Personnel Office and shall be kept current throughout the term of a special Government employee's service with the Office. A supplementary statement shall be submitted at the time of any reappointment; a negative report will suffice if no changes have occurred since the submission of the last previous statement.

§ 1300.735-26 Reviewing statements of financial interests.

(a) The Assistant to the Director for Administration shall review the statements required by §§ 1300.735-24 and 1300.735-25 to determine whether there exists a conflict, or appearance of conflict, between the interests of the employee concerned and the performance of service for the Government. If a conflict or appearance of conflict exists, the Assistant to the Director for Administration shall provide the employee with an opportunity to explain the conflict or appearance of conflict. If remedial action is indicated, the Assistant to the Director for Administration shall refer the statement to the Director, through the General Counsel, with a recommendation for such action. The Director, after consideration of the employee's explanation and such investigation as he or she deems appropriate, shall direct appropriate remedial action if he or she deems it necessary.

(b) Remedial action pursuant to paragraph (a) of this section may include, but is not limited to:

(1) Changes in assigned duties.

(2) Divestment by the employee of his or her conflicting interest.

(3) Disqualification for a particular action.

(4) Exemption pursuant to paragraph (b) of § 1300.735-9 or paragraph (d) of § 1300.735-12.

(5) Disciplinary action.

§ 1300.735-27 Conduct and responsibilities mandated by the Privacy Act of 1974.

(a) An employee shall avoid any action which might result in or create the appearance of using public office to collect or gain access to personal data about individuals beyond that required by or authorized for the performance of assigned duties.

(b) An employee shall not use any personal data about individuals for any purpose other than required and authorized for the performance of assigned duties; or disclose any such information to other agencies or persons not expressly authorized to receive or have access to such information, and shall make any such authorized disclosures in accordance with established Office regulations and procedures.

(c) Each employee, and especially an employee who has access to or is engaged in any way in the handling of information subject to the aforementioned Act, shall acquaint himself or herself with the regulations of this subsection as well as the pertinent provisions of the Act relating to the treatment of such information. Particular attention is directed to the following provisions of the Act:

(1) 5 U.S.C. 552a(e)(7)—The prohibition against collecting or maintaining any information about the political or religious beliefs and activities of individuals unless expressly authorized by statute or the individual.

(2) 5 U.S.C. 552a(b)—The prohibition against disclosure of certain personal data without the prior written consent of the individual, except under certain limited conditions.

(3) 5 U.S.C. 552a(e)(1)—The prohibition against collecting or maintaining any personal data about individuals, except as necessary and relevant to perform a function of the Office which is authorized by statute or Executive order.

(4) 5 U.S.C. 552a(2)—The requirement to collect information which may result in an adverse determination about an individual from that individual whenever practicable.

(5) 5 U.S.C. 552a(3)—The requirement to inform individuals from whom information about themselves is solicited of the purposes for which the information will be used and their rights, benefits, or obligations with respect to supplying that data and the consequences of failure to provide such information.

(6) 5 U.S.C. 552a (b) and (e)(10)—The obligation of employees to comply with established safeguards and procedures to protect personal data from anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual about whom information is maintained.

(7) 5 U.S.C. 552a(c) (1), (2), and (3)—The obligation of employees to maintain an accounting of all disclosures of personal information from systems of records in accordance with established Office procedures, only to persons having an official need to know or to the public under the Freedom of Information Act (5 U.S.C. 552).

(8) 5 U.S.C. 552(e) (5) and (6)—The obligation of employees to assure that any personal information about individuals is as accurate, relevant, timely, and complete as is reasonably necessary to assure fairness to the individual at such time any such information is disclosed to anyone.

(9) 5 U.S.C. 552a(d) (1), (2), and (3)—The obligation of employees to permit

individuals to have access to records pertaining to themselves in accordance with established Office procedures and to have an opportunity to request that such records be amended.

(10) 5 U.S.C. 552a (c)(4) and (d)(4)—The obligation of employees to inform prior recipients of personal data when a record is amended pursuant to the request of an individual or a statement of disagreement has been filed, advise any subsequent recipient that a record is disputed, and provide a copy of the statement of disagreement to both prior and subsequent recipients of the disputed information.

(11) 5 U.S.C. 552a(n)—The prohibition against renting or selling lists of names and addresses unless specifically authorized by law.

(12) 5 U.S.C. 552a(i)(1)—The criminal penalties to which an employee may be subject for failing to comply with certain provisions of the Privacy Act of 1974.

§ 1300.735-28 Conduct and responsibilities regarding Equal Employment Opportunity.

(a) No employee, in a position to in any way affect the hiring, promotion, demotion, or other personnel related action, shall discriminate in the disposition of that action due to race, color, creed, sex, or national origin.

(b) Each employee shall promote the Government's policy of equal opportunity in employment as specified in Executive Order 11478, August, 1968.

APPENDIX A—HOUSE CONCURRENT RESOLUTION 175, 85TH CONGRESS, 2D SESSION

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the following Code of Ethics should be adhered to by all Government employees, including officeholders:

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party or Government department.

2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments, therein and never be a party to their evasion.

3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.

4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

7. Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

9. Expose corruption wherever discovered.

10. Uphold these principles, ever conscious that public office is a public trust.

PART 1301—CLASSIFICATION AND DECLASSIFICATION OF INFORMATION AND MATERIAL

Sec.

1301.1 Introduction.
1301.2 Authority to classify.
1301.3 Downgrading and declassification.
1301.4 Review of classified material for declassification purposes.
1301.5 Burden of proof for administrative determinations.
1301.6 Availability of declassified material.
1301.7 Access by historical researchers.

AUTHORITY: E.O. 11652, 37 FR 5209; National Security Directive of May 17, 1972, 37 FR 10053.

SOURCE: 37 FR 26575, Dec. 14, 1972, unless otherwise noted.

§ 1301.1 Introduction.

The Office of Management and Budget has issued regulations relating to the classification and declassification of national security information and material under authority of Executive Order 11652 of March 9, 1972 (37 FR 5209), and National Security Council Directive of May 17, 1972 (37 FR 10053). These regulations were approved by the Interagency Classification Review Committee on October 17, 1972. Such parts of the regulations as affect the public are published herein as required by the above-cited Executive order and directive.

§ 1301.2 Authority to classify.

The authority to originally classify information or material under these regulations will be limited to those officials concerned with matters of national security. The following officials are granted authority by the Director to assign originally the top secret, secret, or confidential classifications to information relating to national security or foreign relations of the United States: Deputy Director; Associate Director; Assistant Director for Economic Science and Technological Affairs; and Assistant Director for National Security and International Affairs; Chief, International Programs Division; and Chief, National Security Programs Division. The Chief, Economic Science and Technology Programs Division is granted authority to assign originally the secret and confidential classifications to such information. The confidential classification may be assigned originally by the deputy chiefs of the above named program divisions, plus such assistant chiefs of those divisions as may be designated in writing by the Director. The classifier of information or material will insure that the information meets the test for that classification. If any substantial doubt exists as to which classification category is appropriate, or as to whether the material should be classified at all, he should designate the less restrictive category.

§ 1301.3 Downgrading and declassification.

Classified information and material will be downgraded or declassified as soon as there are no longer any grounds for continued classification within the classification categories set forth in the order. At the time of origin the classifier will, whenever possible, clearly mark on the information or material a specific date or event upon which downgrading or declassification will occur. Whenever earlier dates or events cannot be determined, the general declassification schedule will apply.

(a) Declassification of classified material after 10 years. All information or material, classified before or after June 1, 1972, and exempted from the general declassification schedule, shall be subject to mandatory classification review at any time after the expiration of 10 years from the date of origin.

(b) Atomic energy material, restricted data, and intelligence and cryptography. Nothing in these regulations will supersede any requirements made by or under the Atomic Energy Act. Restricted data, and material designated formerly restricted data, will be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act and the regulations of the Atomic Energy Commission. Further, nothing in these regulations will prohibit compliance with any special requirements that another department or agency may impose as to classified material or information relating to communications intelligence, cryptography, and related matters originated by the department or agency.

§ 1301.4 Review of classified material for declassification purposes.

(a) *Systematic reviews.* All information and material classified by the Office after June 1, 1972 and evaluated under 44 U.S.C. 2101-2144 as being of sufficient historical or other value to warrant preservation, will be systematically reviewed on a timely basis for the purpose of making such information and material publicly available in accordance with the declassification determination made by the classifying authority. During each year each division and major organizational element within the Director's office will segregate to the maximum extent possible all such information and material warranting preservation and becoming declassified at or prior to the end of such year. Promptly after the end of such year, the records officer will make the declassified information and material available to the public to the extent permitted by law.

(b) *Mandatory review of material over 10 years old.* All classified information and material specified in § 1301.3(a), of this part, will be subject to a classification review provided:

(1) A department or agency of the Government, or a member of the public requests the review;

(2) The request is in writing and describes the classified information or material sufficiently to enable the Office to identify it;

(3) The classified information or material can be obtained with only a reasonable amount of effort.

(i) *Deficient requests.* When the description in a request is deficient the requester should be asked to provide as much additional information as possible. Before denying a request on the grounds that the information or material is not available with a reasonable amount of effort, the requester should be asked to limit his request to information or material that is reasonably obtainable. If the requester then fails to describe the information or material he seeks sufficiently to enable identification, or it cannot be obtained with a reasonable amount of effort, the requester will be notified of the reasons why no action can be taken and of his right to appeal the decision to the Office Review Committee.

(ii) *Procedure.* Requests for classification review under this section should be directed to the Records Officer, Office of Management and Budget, Washington, D.C. 20503. The Records Officer will assign the request to the appropriate office or division within the Office for action, and the latter will immediately acknowledge receipt of the request to the requester in writing. The action office or division will thereafter make a determination within 30 days of receipt of the request or explain to the requester the reasons why further time is necessary. If at the end of 60 days from receipt of the request for review no determination has been made, the requester may apply to the Office Review Committee, Office of Management and Budget, Washington, D.C. 20503, for a determination. If the action office or division determines that continued classification is required, the requester will promptly be notified, and, whenever possible, provided with a brief statement as to why the requested information or material cannot be declassified. The requester may appeal any such determination to the Office Review Committee and the notice of determination will advise him of this right. If, after appeal, the Office Review Committee determines that continued classification is required, it will promptly so notify the requester and advise him that he may appeal the denial to the Interagency Review Committee.

§ 1301.5 Burden of proof for administrative determinations.

In making its determinations concerning requests for declassification of information or material, the burden of proof rests with the originating agency to show that continued classification is warranted under the terms of the order.

§ 1301.6 Availability of declassified material.

Upon a determination under these regulations that the requested material no longer warrants classification, it shall be declassified and made promptly available to the requester, if not otherwise exempt from disclosure under section 552(b) of title 5 U.S.C. (Freedom of Information Act) or other provisions of law.

§ 1301.7 Access by historical researchers.

(a) Persons outside the executive branch engaged in historical research projects may be authorized access to classified information or material provided the Director determines that:

(1) Access is clearly consistent with the interests of national security;

(2) The information or material requested is reasonably accessible and can be located and compiled with a reasonable amount of effort; and

(3) The researcher agrees to adequately safeguard the information and to authorize a review of his notes and manuscript for the sole purpose of determining that no classified information is contained therein.

(b) Requests from historical researchers to Office of Management and Budget for classified information or material will be directed to the Records Officer.

PART 1302—PRIVACY ACT PROCEDURES

Sec.
1302.1 Rules for determining if an individual is the subject of a record.
1302.2 Requests for access.
1302.3 Access to the accounting of disclosures from records.
1302.4 Requests to amend records.
1302.5 Request for review.
1302.6 Schedule of fees.

AUTHORITY: Pub. L. 93-579, 88 Stat. 1896, 5 USC 552a(f).

SOURCE: 41 FR 38491, Sept. 10, 1976, unless otherwise noted.

§ 1302.1 Rules for determining if an individual is the subject of a record.

(a) Individuals desiring to know if a specific system of records maintained by the Office of Management and Budget contains a record pertaining to them should address their inquiries to the Assistant to the Director for Administration, Office of Management and Budget, Washington, D.C. 20503. The written inquiry should contain a specific reference to the system of records maintained by OMB listed in the OMB Notices of Systems of Records or it should describe the type of record in sufficient detail to reasonably identify the system of records. Notice of OMB systems of records subject to the Privacy Act will be made in the FEDERAL REGISTER and copies of the notices will be available upon request to the Assistant to the Director for Administration when so published. A compilation of such notices will also be made and published by the Office of Federal Register, in accordance with section 5 U.S.C. 552a(f).

(b) At a minimum, the request should also contain sufficient information to identify the requester in order to allow OMB to determine if there is a record pertaining to that individual in a particular system of records. In instances when the information is insufficient to insure disclosure to the individual to whom the information pertains, in view of the sensitivity of the information, OMB reserves the right to ask the requester for additional identifying information.

(c) Ordinarily the requester will be informed whether the named system of records contains a record pertaining to the requester within 10 days of receipt of such a request (excluding Saturdays, Sundays, and legal Federal holidays). Such a response will also contain or reference the procedures which must be followed by the individual making the request in order to gain access to the record.

(d) Whenever a response cannot be made within the 10 days, the Assistant to the Director for Administration will inform the requester of the reasons for the delay and the date by which a response may be anticipated.

§ 1302.2 Requests for access.

(a) *Requirement for written requests.* Individuals desiring to gain access to a record pertaining to them in a system of records maintained by OMB must submit their request in writing in accordance with the procedures set forth in paragraph (b) of this section. Due to security measures in effect in both the Old and New Executive Office Buildings, requests made in person (walk-ins) cannot be accepted, except that individuals who are employed by the Office of Management and Budget may make their request on a regularly scheduled workday (Monday through Friday, excluding legal Federal holidays) between the hours of 9:00 a.m. and 5:30 p.m. Such requests for access by individuals employed by OMB need not be made in writing.

(b) *Procedures*—(1) *Content of the Request.* (i) The request for access to a record in a system of records shall be addressed to the Assistant to the Director for Administration, at the address cited above, and shall name the system of records or contain a description (as concise as possible) of such system of records. The request should state that the request is pursuant to the Privacy Act of 1974. In the absence of specifying solely the Privacy Act of 1974 and, if the request may be processed under both the Freedom of Information Act and the Privacy Act and the request specifies both or neither act, the procedures under the Privacy Act of 1974 will be employed. The individual will be advised that the procedures of the Privacy Act will be utilized, of the existence and the general effect of the Freedom of Information Act, and the difference between procedures under the two acts (e.g. fees, time limits, access). The request should contain necessary information to verify the identity of the requester (see § 1302.2(b)(2)(vi), of this part). In addition, the requester should include any other information which may assist in the rapid identification of the record for which access is being requested (e.g., maiden name, dates of employment, etc.) as well as any other identifying information contained in and required by the OMB Notice of Systems of Records.

(ii) If the request for access follows a prior request under § 1302.1, of this part, the same identifying information need not be included in the request for access if a reference is made to that prior correspondence, or a copy of the OMB response to that request is attached.

(iii) If the individual specifically desires a copy of the record, the request should so specify.

(2) *OMB action on request.* A request for access will ordinarily be answered within 10 days, except when the Assistant to the Director for Administration determines that access cannot be afforded in that time, in which case the requester will be informed of the reason for the delay and an estimated date by which the request will be answered. Normally, access will be granted within 30 days from the date the request was received by the Office of Management and Budget. At a minimum, the answer to the request for access shall include the following:

(i) A statement that there is a record as requested or a statement that there is not a record in the system of records maintained by OMB;

(ii) A statement as to whether access will be granted only by providing a copy of the record through the mail; or the address of the location and the date and time at which the record may be examined. In the event the requester is unable to meet the specified date and time, alternative arrangements may be made with the official specified in § 1302.2(b)(1) of this part;

(iii) A statement, when appropriate, that examination in person will be the sole means of granting access only when the Assistant to the Director for Administration has determined that it would not unduly impede the requester's right of access;

(iv) The amount of fees charged, if any (see § 1302.6 of this part) (Fees are applicable only to requests for copies.);

(v) The name, title, and telephone number of the OMB official having operational control over the record; and

(vi) The documentation required by OMB to verify the identity of the requester. At a minimum, OMB's verification standards include the following:

(A) *Current or former OMB employees.* Current or former OMB employees requesting access to a record pertaining to them in a system of records maintained by OMB may, in addition to the other requirements of this section, and at the sole discretion of the official having operational control over the record, have his or her identity verified by visual observation. If the current or former OMB employee cannot be so identified by the official having operational control over the records, identification documentation will be required. Employee identification cards, annuitant identification, driver licenses, or the "employee copy" of any official personnel document in the record are examples of acceptable identification validation.

(B) *Other than current or former OMB employees.* Individuals other than current or former OMB employees requesting access to a record pertaining to them in a system of records maintained by OMB must produce identification documentation of the type described herein, prior to being granted access. The extent of the identification documentation required will depend on the type of record to be accessed. In most cases, identification verification will be accomplished by the presentation of two forms of identification. Any additional requirements are specified in the system notices published pursuant to 5 U.S.C. 552a(e)(4).

(C) *Access granted by mail.* For records to be accessed by mail, the Assistant to the Director for Administration shall, to the extent possible, establish identity by a comparison of signatures in situations where the data in the record is not so sensitive that unauthorized access could cause harm or embarrassment to the individual to whom they pertain. No identification documentation will be required for the disclosure to the requester of information required to be made available to the public by 5 U.S.C. 552. When, in the opinion of the Assistant to the Director for Administration, the granting of access through the mail could reasonably be expected to result in harm or embarrassment if disclosed to a person other than the individual to whom the record pertains, a notarized statement of identity or some similar assurance of identity will be required.

(D) *Unavailability of identification documentation.* If an individual is unable to produce adequate identification documentation the individual will be required to sign a statement asserting identity and acknowledging that knowingly or willfully seeking or obtaining access to records about another person under false pretenses may result in a fine of up to $5,000. In addition, depending upon the sensitivity of the records sought to be accessed, the official having operational control over the records may require such further reasonable assurances as may be considered appropriate; e.g., statements of other individuals who can attest to the identity of the requester. No verification of identity will be required of individuals seeking access to records which are otherwise available to any person under 5 U.S.C. 552, Freedom of Information Act.

(E) *Access by the parent of a minor, or legal guardian.* A parent of a minor, upon presenting suitable personal identification, may access on behalf of the minor any record pertaining to the minor maintained by OMB in a system of records. A legal guardian may similarly act on behalf of an individual declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, absent a court order or consent, a parent or legal guardian has no absolute right to have access to a record about a child. Minors are not precluded from exercising on their own behalf rights given to them by the Privacy Act.

(F) *Granting access when accompanied by another individual.* When an individual requesting access to his or her record in a system of records maintained by OMB wishes to be accompanied by another individual during the course of the examination of the record, the individual making the request shall submit to the official having operational control of the record, a signed statement authorizing that person access to the record.

(G) *Denial of access for inadequate identification documentation.* If the official having operation control over the records in a system of records maintained by OMB determines that an individual seeking access has not provided sufficient identification documentation to permit access, the official shall consult with the Assistant to the Director for Administration prior to finally denying the individual access.

(H) *Review of decision to deny access.* Whenever the Assistant to the Director for Administration determines, in accordance with the procedures herein, that access cannot be granted, the response will also include a statement of the procedures to obtain a review of the decision to deny in accordance with § 1302.5 of this part.

(vii) *Exceptions.* Nothing in these regulations shall be construed to entitle an individual the right to access to any information compiled in reasonable anticipation of a civil action or proceedings. The mere fact that records in a system of records are frequently the subject of litigation does not bring those systems of records within the scope of this provision. This provision is not intended to preclude access by an individual to records which are available to that individual under other processes such as the Freedom of Information Act or the rules of civil procedure.

§ 1302.3 Access to the accounting of disclosures from records.

Rules governing the granting of access to the accounting of disclosures are the same as those for granting access to the records (including verification of identity) outlined in § 1302.2, of this part.

§ 1302.4 Requests to amend records.

(a) *Requirement for written requests.* Individuals desiring to amend a record that pertain to them in a system of records maintained by OMB, must submit their request in writing in accordance with the procedures set forth herein unless this requirement is waived by the official having responsibility for the system of records. Records not subject to the Privacy Act of 1974 will not be amended in accordance with these provisions. However, individuals who believe that such records are inaccurate may bring this to the attention of OMB.

(b) *Procedures.* (1) (i) The request to amend a record in a system of records shall be addressed to the Assistant to the Director for Administration. Included in the request shall be the name of the system and a brief description of the record proposed for amendment. In the event the request to amend the record is the result of the individual's having gained access to the record in accordance with the provisions concerning access to records as set forth above, copies of previous correspondence between the requester and OMB will serve in lieu of a separate description of the record.

(ii) When the individual's identity has been previously verified pursuant to § 1302.2(b)(2)(vi) herein, further verification of identity is not required as long as the communication does not suggest that a need for verification is present. If the individual's identity has not been previously verified, OMB may require identification validation as described in § 1302.2(b)(2)(vi). Individuals desiring assistance in the preparation of a request to amend a record should contact the Assistant to the Director for Administration at the address cited above.

(iii) The exact portion of the record the individual seeks to have amended should be clearly indicated. If possible, the proposed alternative language should also be set forth, or at a minimum, the facts which the individual believes are not accurate, relevant, timely, or complete should be set forth with such particularity as to permit OMB not only to understand the individual's basis for the request, but also to make an appropriate amendment to the record.

(iv) The request must also set forth the reasons why the individual believes his record is not accurate, relevant, timely, or complete. In order to avoid the retention by OMB of personal information merely to permit verification of records, the burden of persuading OMB to amend a record will be upon the individual. The individual must furnish sufficient facts to persuade the official in charge of the system of the inaccuracy, irrelevancy, timeliness, or incompleteness of the record.

(v) Incomplete or inaccurate requests will not be rejected categorically. The individual will be asked to clarify the request as needed.

(2) *OMB action on the request.* To the extent possible, a decision upon a request to amend a record will be made within 10 days, excluding Saturdays, Sundays, and legal Federal holidays. The response reflecting the decision upon a request for amendment will include the following:

(i) The decision of the Office of Management and Budget whether to grant in whole, or deny any part of the request to amend the record.

(ii) The reasons for the determination for any portion of the request which is denied.

(iii) The name and address of the official with whom an appeal of the denial may be lodged.

(iv) The name and address of the official designated to assist, as necessary, and upon request of, the individual making the request in the preparation of the appeal.

(v) A description of the review of the appeal within OMB (see § 1302.5 of this part).

(vi) A description of any other procedures which may be required of the individual in order to process the appeal.

If the nature of the request or the system of records precludes a decision within 10 days, the individual making the request will be informed within 10 days of the expected date for a decision. Such a decision will be issued as soon as it is reasonably possible, normally within 30 days from the receipt of the request (excluding Saturdays, Sundays, and legal Federal holidays) unless unusual circumstances preclude completing action within that time. If the expected completion date for the decision indicated cannot be met, the individual will be advised of that delay and of a revised date when the decision may be expected to be completed.

§ 1302.5 Request for review.

(a) Individuals wishing to request a review of the decision by OMB with regard to an initial request to access or amend a record in accordance with the provisions of §§ 1302.2 and 1302.4 of this part, should submit the request for review in writing and, to the extent possible, include the information specified in § 1302.5(b), below. Individuals desiring assistance in the preparation of their request for review should contact the Assistant to the Director for Administration at the address provided herein.

(b) The request for review should contain a brief description of the record involved or in lieu thereof, copies of the correspondence from OMB in which the request to access or to amend was denied and also the reasons why the requester believes that access should be granted or the disputed information amended. The request for review should make reference to the information furnished by the individual in support of his claim and the reasons as required by §§ 1302.2 and 1302.4 of this part set forth by OMB in its decision denying access or amendment. Appeals filed without a complete statement by the requester setting forth the reasons for the review will, of course, be processed. However, in order to make the appellate process as meaningful as possible, the requester's disagreement should be set forth in an understandable manner. In order to avoid the unnecessary retention of personal information, OMB reserves the right to dispose of the material concerning the request to access or amend a record if no request for review in accordance with this section is received by OMB within 180 days of the mailing by OMB of its decision upon an initial request. A request for review received after the 180 day period may, at the discretion of the Assistant to the Director for Administration, be treated as an initial request to access or amend a record.

(c) The request for review should be addressed to the Assistant to the Director for Administration.

(d) Upon receipt of a request for review, the Assistant to the Director for Administration will convene a review group composed of the Assistant to the Director for Administration, the General Counsel, or their designees, and the official having operational control over the record. This group will review the basis for the requested review and will develop a recommended course of action to the Deputy Director. If at any time additional information is required from the requester, the Assistant to the Director for Administration is authorized to acquire it or authorize its acquisition from the requester.

(e) The Office of Management and Budget has established an internal Committee on Freedom of Information and Privacy (hereinafter referred to as the Committee). The Committee is composed of:

(1) Deputy Director;

(2) Assistant to the Director for Administration;

(3) General Counsel;

(4) Assistant Director for Budget Review;

(5) Assistant Director for Legislative Reference;

(6) Assistant to the Director for Public Affairs;

(7) Deputy Associate Director for Information Systems;

(8) Deputy Associate Director for Statistical Policy;

(9) Deputy Associate Director for National Security;

(10) Budget and Management Officer;

(11) Personnel Officer.

(f) The Committee, when directed by the Assistant to the Director for Administration, will review the Office's administration of the Freedom of Information and Privacy Acts and make recommendations for the improvement thereto. In addition, the Committee, upon the request of the Deputy Director, may evaluate a request for review or appeal and recommend a decision to the Deputy Director, who has the final authority regarding appeals.

(g) The Deputy Director will inform the requester in writing of the decision on the request for review within 20 days (excluding Saturdays, Sundays, and legal Federal holidays) from the date of receipt by OMB of the individual's request for review unless the Deputy Director extends the 20 day period for good cause. The extension and the reasons therefor will be sent by OMB to the requester within the initial 20 day period. Such extensions should not be routine and should not normally exceed an additional thirty days. If the decision does not grant in full the request for amendment, the notice of the decision will provide a description of the steps the individual may take to obtain judicial review of such a decision, a statement that the individual may file a concise statement with OMB setting forth the individual's reasons for his disagreement with the decision and the procedures for filing such a statement of disagreement. The Assistant to the Director for Administration has the authority to determine the "conciseness" of the statement, taking into account the scope of the disagreement and the complexity of the issues. Upon the filing of a proper concise statement by the individual, any subsequent disclosure of the information in dispute will be clearly noted so that the fact that the record is disputed is apparent, a copy of the concise statement furnished and a concise statement by OMB setting forth its reasons for not making the requested changes, if OMB chooses to file such a statement. A notation of a dispute is required to be made only if an individual informs the agency of his disagreement with OMB's determination in accordance with § 1302.5 (a), (b) and (c). A copy of the individual's statement, and if it chooses, OMB's statement will be sent to any prior transferee of the disputed information who is listed on the accounting required by 5 U.S.C. 552a(c). If the reviewing official determines that the record should be amended in accordance with the individual's request, OMB will promptly correct the record, advise the individual, and inform previous recipients if an accounting of the disclosure was made pursuant to 5 U.S.C. 552(a)(c). The notification of correction pertains to information actually disclosed.

§ 1302.6 Schedule of fees.

(a) *Prohibitions against charging fees.* Individuals will not be charged for:

(1) The search and review of the record,

(2) Any copies of the record produced as a necessary part of the process of making the record available for access, or

(3) Any copies of the requested record when it has been determined that access can only be accomplished by providing a copy of the record through the mail.

(b) *Waiver.* The Assistant to the Director for Administration may at no charge, provide copies of a record if it is determined the production of the copies is in the interest of the Government.

(c) *Fee schedule and method of payment.* Fees will be charged as provided below except as provided in paragraphs (a) and (b) of this section.

(1) *Duplication of records.* Records will be duplicated at a rate of $.10 per page for all copying of 4 pages or more. There is not charge for duplication 3 or fewer pages.

(2) Where it is anticipated that the fees chargeable under this section will amount to more than $25.00, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed $25.00, an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the requester to consult with Office personnel in order to reformulate the request in a manner which will reduce the fees, yet still meet the needs of the requester.

(3) Fees should be paid in full prior to issuance of requested copies. In the event the requester is in arrears for previous requests copies will not be provided for any subsequent request

until the arrears have been paid in full.

(4) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed or delivered to the Assistant to the Director for Administration, Office of Management and Budget, Washington, D.C. 20503.

(5) A receipt for fees paid will be given upon request.

PART 1303—PUBLIC INFORMATION PROVISIONS OF THE ADMINISTRATIVE PROCEDURES ACT

ORGANIZATION

Sec.
1303.1 General.
1303.2 Authority and functions.
1303.3 Organization.

PROCEDURES

1303.10 Methods.

AVAILABILITY OF INFORMATION

1303.20 Inspection, copying and exceptions.

CHARGES FOR SEARCH AND REPRODUCTION

1303.30 Schedule of fees and method of payment for services rendered.

AUTHORITY: 5 U.S.C. 552, as amended by Public Law 93-502.

SOURCE: 47 FR 33483, Aug. 3, 1982, unless otherwise noted.

ORGANIZATION

§ 1303.1 General

This information is furnished for the guidance of the public and in compliance with the requirements of section 552 of title 5, United States Code, as amended.

§ 1303.2 Authority and functions.

(a) The Office of Management and Budget was established in the Executive Office of the President pursuant to Part I of Reorganization Plan No. 2 of 1970 (35 FR 7959), effective July 1, 1970. That plan transferred to the President all functions vested by law in the Bureau of the Budget, or its Director, and designated the Bureau of the Budget as the Office of Management and Budget. By Executive Order No. 11541 of July 1, 1970 (35 FR 10737), the President delegated all functions transferred to him by Part I of the Plan to the Director of the Office of Management and Budget.

(b) The principal statutory functions of the Office of Management and Budget are contained in the Budget and Accounting Act of 1921 (42 Stat. 20, 31 U.S.C. 1-25); the Government Corporation Control Act (59 Stat. 597, 31 U.S.C. 841-869); the Budget and Accounting Procedures Act of 1950 (65 Stat. 832), the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93-344), the Office of Federal Procurement Policy Act (Public Law 93-400), the Privacy Act of 1974 (Pub. L. 93-579), and the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

(c) The functions of the Office of Management and Budget are carried out pursuant to the provisions of the statutes cited above and the provisions of various Executive orders—principally, Executive Order No. 8248 of September 8, 1939 (CFR Cum. Supp., p. 576), outlining certain functions to be performed by the Bureau of the Budget for the President, and Executive Order No. 11239 of June 28, 1965 (3 CFR Supp., p. 146), as amended, delegating certain functions of the President to the Director of the Bureau of the Budget, and, Executive Order No. 12991 on Federal Regulation. Under the terms of Executive Order No. 11541 of July 1, 1970, the assignments and delegations made in the earlier orders are to be considered as assignments to the Office of Management and Budget and its Director.

§ 1303.3 Organization.

The central organization of the Office of Management and Budget consists of:

(a) The Office of the Director, which includes the Director and the Deputy Director and their principal assistants, including the Deputy Assistant Director for Administration.

(b) The Administrator of the Office of Federal Procurement Policy.

(c) The Administrator of the Office of Information and Regulatory Affairs.

(d) Two Associate and Assistant Directors with Government-wide management responsibilities in specialized areas as follows:

(1) Legislative Reference.

(2) Management.

(e) Five program and budget Associate and Assistant Directors, as follows:

(1) Budget Review.

(2) National Security and International Affairs.

(3) Human Resources, Veterans, and Labor.

(4) Economics and Government.

(5) Natural Resources, Energy, and Science.

(f) The Office has no field organization.

(g) Units of the Office of Management and Budget are presently located in the Old Executive Office Building, 17th Street and Pennsylvania Avenue, N.W., and in the New Executive Office Building, 17th and H Streets, N.W., Washington, D.C. 20503. Regular office hours are from 9 a.m. to 5:30 p.m., Monday through Friday. Both buildings are under security control. Persons desiring to visit offices or employees of the Office of Management and Budget in either building will usually find it easier to do so if they write or telephone in advance for an appointment.

PROCEDURES

§ 1303.10 Methods of operation.

(a) The Office of Management and Budget maintains current indexes which identify information pertaining to matters issued, adopted, or promulgated after July 4, 1967, that are within the scope of 5 U.S.C. 552(a)(2). These indexes are updated quarterly and are published in the FEDERAL REGISTER. They are also available for public inspection and copying at the Office's Publication Office, Room G-236, New Executive Office Building, 17th and H Streets, N.W., Washington, D.C. 20503. The indexes may be examined between the hours of 9:00 a.m. and 5:30 p.m. on any day, except Saturdays, Sundays, and legal public holidays.

(b) The Deputy Assistant Director for Administration is responsible for acting on all initial requests. Individuals wishing to obtain any information listed on the indexes should address their request in writing to the Deputy Assistant Director for Administration, Office of Management and Budget, Washington, D.C. 20503, Phone 395-7250. Requests for information shall be as specific as possible.

(c) Upon receipt of any request for information or records, the Deputy Assistant Director for Administration will determine within 10 days (excepting Saturdays, Sundays and legal public holidays) whether it is appropriate to grant the request and will immediately provide written notification to the person making the request. If the request is denied, the written notification to the person making the request shall include the names of the individuals who participated in the determination and a notice that an appeal may be lodged including the format and content of any such appeal within the Office of Management and Budget. (Receipt of a request as used herein means the date the request is received in the office of the Deputy Assistant Director for Administration.)

(d) Appeals shall be set forth in writing and addressed to the Deputy Assistant Director for Administration at the address specified in paragraph (b) of this section. The appeal shall include a statement explaining the basis for the appeal. Determinations of appeals will be set forth in writing and signed by the Deputy Director, or his designee, within 20 days (excepting Saturdays, Sundays, and legal public holidays). If, on appeal, the denial is in whole or in part upheld, the written determination will also contain a notification of the provisions for judicial review and the names of the persons who participated in the determination.

(e) In unusual circumstances, the time limits prescribed in paragraphs (c) and (d) of this section may be extended for not more than 10 working days (excepting Saturdays, Sundays, or legal public holidays). Extensions may be granted by the Deputy Assistant Director for Administration. The extension period may be split between the initial request and the appeal but in no instance may the total period exceed 10 working days. Extensions will be by written notice to the persons making the request and will set forth the reasons for the extension and the date the determination is expected. As used herein, but only to the extent reasonably necessary to the proper processing of the particular request, the term "unusual circumstances" means:

(1) The need to search for and collect the requested records from establishments that are separated from the office processing the request;

(2) The need to search for, collect, and examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practical speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency which have a substantial subject matter interest therein.

AVAILABILITY OF INFORMATION

§ 1303.20 Inspection, copying, and exceptions.

(a) When a request for information has been approved pursuant to § 1303.10 above, the person making the request may make an appointment to inspect or copy the materials requested during regular business hours by writing or telephoning the Deputy Assistant Director for Administration at the address or telephone number listed in § 1303.10(c). Such materials may be copied manually without charge, and reasonable facilities will be made available for that purpose. Also, copies of individual pages of such materials will be made available at the price per page specified in § 1303.30(a); however, the right is reserved to limit to a reasonable quantity the copies of such materials which may be made available in this manner when copies also are offered for sale by the Superintendent of Documents.

(b) Certain functional units of the Office of Management and Budget solely advise and assist the President, and therefore these units are not covered by 5 U.S.C. 552. However, the Director or the Deputy Director, acting on his behalf, may determine that a record which falls in one of the following categories shall be made available. These units carry out activities that provide advice and assistance to the President with regard to:

(1) The formulation and preparation of the Federal Budget.

(2) The processing and enrolled bills and determinations of the relationships of pending and proposed legislation to the program of the President.

(3) The compensation of Federal employees.

(4) The establishment and organization of new agencies and the reorganization of existing programs and agencies, and

(5) The preparation of Executive Orders and Proclamations.

(c) Except to the extent that the Director or Deputy Director, acting on his behalf, determines that a record which falls within one of the following categories shall be made available, this section shall not apply to matters that are:

(1)(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of the national defense or foreign policy, and (ii) are in fact properly classified pursuant to such Executive Order.

(2) Related solely to the internal personnel rules and practices of the Office.

(3) Specifically exempted from disclosure by statute, provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issues, or (ii) establishes particular criteria for withholding or refers to particular types of matter to be withheld.

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) Interagency or intraagency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Office.

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel.

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

CHARGES FOR SEARCH AND REPRODUCTION

§ 1303.30 Schedule of fees and method of payment for services.

(a) Following is the fees schedule for the search and reproduction of information available under the Freedom of Information Act (5 U.S.C. 552), as amended.

(1) Search for records—Number of professional and/or clerical staff hours times the searcher's hourly wage.

(2) Duplication of records—Records will be duplicated at a rate of $.10 per page.

(3) Other—When no specific fee has been established for a service, or the request for a service does not fall under one of the above categories due to the amount or type thereof, the Deputy Assistant Director for Administration is authorized to establish an appropriate fee based on "direct costs" as provided in the Freedom of Information Act and in accordance with Office of Management and Budget Circular No. A-25, "User charges." Examples of services covered by this provision include searches involving computer time or special travel, transportation, or communications costs.

(b) If records requested under this part are stored elsewhere other than the headquarters of the Office of Management and Budget at Washington, D.C., the special costs of returning such records to the headquarters for review will be added to the search costs.

(c) Ordinarily, fees shall not be charged if the records requested are not found, or if all of the records located are withheld as exempt. However, if the time expended in processing the request is substantial, and if the requester has been notified of the estimated cost pursuant to paragraph (d) of this section and has been specifically advised that it cannot be determined in advance whether any records will be made available, fees may be charged.

(d) Where it is anticipated that the fees chargeable under this section will amount to more than $50.00, or the maximum amount specified in the request, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed $50.00, an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the requester to consult with office personnel in order to reformulate the request in a manner which will reduce the fees, yet still meet the needs of the requester. A request will not be deemed to have been received until the requester is notified of the anticipated cost and agrees to bear it.

(e) Fees must be paid in full prior to issuance of requested copies. In the event the requester is in arrears for previous requests for which the Office was unable to find or provide the requested information (see paragraph (b) of this section), copies of records will not be provided for any subsequent request until the arrears have been paid in full.

(f) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed or delivered to the Deputy Assistant Director for Administration, Office of Management and Budget, Washington, D.C. 20503.

(g) A receipt for fees paid will be given upon request. Refund of fees paid for services actually rendered will not be made.

(h) The Deputy Assistant Director for Administration, or an officer designated by the Deputy Assistant Director for Administration may in accordance with the Freedom of Information Act, as amended, waive or reduce all or part of any fee provided for in this section when the Deputy Assistant Director for Administration or the designated officer deems it to be in either (a) the Office's interest or (b) in the public interest because furnishing the information can be considered as primarily benefiting the general public.

PART 1304—POST EMPLOYMENT CONFLICT OF INTEREST

Sec.
1304.4601 Purpose.
1304.4604 Definitions.
1304.4605 Post-Employment Restrictions.
1304.4606 Exemptions.
1304.4607 Advice to Former Government Employees.
1304.4608 Administrative Enforcement Procedures (18 U.S.C. 207(j); 5 CFR 737.27).

AUTHORITY: Title V, Section 501(a), Pub. L. 95-521, as amended, 92 Stat. 1864; and Sections 1 and 2, Pub. L. 96-28, 93 Stat. 76 [18 U.S.C. 207]; 5 CFR 737.

SOURCE: 45 FR 84007, Dec. 22, 1980, unless otherwise noted.

§ 1304.4601 Purpose.

(a) This section sets forth OMB's policy and procedures under the Ethics in Government Act of 1978, 18 U.S.C. 207, and the Office of Personnel Management's implementing regulations, 5 CFR Part 737, for determining violations of restrictions on post-employment activities and for exercising OMB's administrative enforcement authority.

(b) These regulations bar certain acts by former Government employees which may reasonably give the appearance of making unfair use of prior Government employment and affiliations. OMB acts on the premise that it has the primary responsibility for the enforcement of restrictions on post-employment activities and that criminal enforcement by the Department of Justice should be undertaken only in cases involving aggravated circumstances.

(c) These regulations do not incorporate possible additional restrictions contained in a professional code of conduct to which an employee may also be subject.

(d) Any person who holds a Government position after June 30, 1979, is subject to the restrictions under this section; except that the new provisions applicable to Senior employees designated by the Director of the Office of Government Ethics are effective February 28, 1980.

§ 1304.4604 Definitions.

(a) "Government Employee" includes any officer or employee of the Executive Branch, those appointed or detailed under 5 U.S.C. 3374, and Special Government Employees. It does not include an individual performing services for the United States as an independent contractor under a personal service contract.

(b) "Former Government Employee" means one who was, and no longer is, a Government employee.

(c) "Special Government Employee" means an officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties on a full-time or intermittent basis for not more than 130 days during any period of 365 consecutive days. This applies whether the Special Government Employee is compensated or not.

(d) "Senior Employee" means an employee or officer as designated in the statute or by the Director of the Office of Government Ethics. The Director of the Office of Government Ethics has designated civilians who have significant decision-making or supervisory responsibility and are paid at or equivalent to GS-17 or above as Senior Employees. Civilians paid at the Executive level are automatically designated by statute as Senior Employees. (A list of Senior Employee positions is found at 5 CFR 737.33.)

§ 1304.4605 Post-Employment Restrictions.

(a) General Restrictions Applicable to All Former Government Employees:

(1) *Permanent Bar.* A former Government employee is restricted from acting as a representative before an agency as to a particular matter involving a specific party if the employee participated personally and substantially in that matter as a Government employee. The government employee is also restricted from making any oral or written communication to an agency with the intent to influence on behalf of another person as to a particular matter involving a specific party if the former Government employee participated personally and substantially in that matter as a Government employee.

(2) *Two-Year Bar.* (i) A former Government employee is restricted for two years from acting as a representative before an agency as to a particular matter involving a specific party if the employee had official responsibility for that matter. The former Government employee is also restricted for two years from making any oral or written communication to any agency with the intent to influence on behalf of another person as to a particular matter involving a specific party if the employee had official responsibility for that matter.

(ii) In order to be a matter for which the former Government employee had official responsibility, the matter must actually have been pending under the employee's responsibility within the period of one year prior to the termination of such responsibility.

(iii) The statutory two-year restriction period is measured from the date when the employee's responsibility for a particular matter ends, not from the termination of Government service.

(b) Restrictions Applicable Only to Former Senior Employees:

(1) *Two-Year Bar on Assisting in Representing.* (i) A former Senior Employee is restricted for two years from assisting in representing another person by personal appearance before an agency as to a particular matter involving a specific party if the former Senior Employee participated personally and substantially in that matter as a Government employee.

(ii) The statutory two-year period is measured from the date of termination of employment in the position that was held by the Senior Employee when he participated personally and substantially in the matter involved.

(2) *One-Year Bar on Attempts to Influence Former Agency.* (i) A former Senior Employee is restricted for one year from any transactions with the former agency on a particular matter with the intent to influence the agency, regardless of the former Senior Employee's prior involvement in that matter.

(ii) This restriction is aimed at the possible use of personal influence based on past Government affiliations in order to facilitate transaction of business. Therefore, it includes matters which first arise after a Senior Employee leaves Government service.

(iii) The restriction applies whether the former Senior Employee is representing another or representing himself, either by appearance before an agency or through communication with that agency.

(c) OFPP is a separate agency for purposes of the foregoing restrictions on post-employment activities.

§ 1304.4606 Exemptions.

(a) *General.* (1) Communications made solely to furnish scientific or technological information are exempt from these prohibitions.

(2) A former Government employee may be exempted from the restrictions on post-employment practices if the Deputy Director of OMB, in consultation with the Director of the Office of Government Ethics, executes a certification that is published in the FEDERAL REGISTER. The certification shall state that the former Government employee has outstanding qualifications in a scientific, technological or other technical discipline; is acting with respect to a particular matter which requires such qualifications; and the national interest would be served by his participation.

(b) *Specific.* The one-year bar shall not apply to a former Senior Employee's representation on new matters if the former Senior Employee is:

(1) An elected State or local government official, who is acting on behalf of such government; or

(2) Regularly employed by or acting on behalf of an agency or instrumentality of a State or local government; an accredited, degree-granting institution of higher education; or a nonprofit hospital or medical research organization.

§ 1304.4607 Advice to Former Government Employees.

The Office of General Counsel, OMB, has the responsibility for providing assistance promptly to former Government employees who seek advice on specific problems.

§ 1304.4608 Administrative Enforcement Procedures (18 U.S.C. 207(j); 5 CFR 737.27).

(a) Whenever an allegation is made that a former Government employee has violated 18 U.S.C. 207(a), (b) or (c) or any of the regulations promulgated thereunder by the Office of Government Ethics or by OMB, the allegation and any supporting evidence shall be transmitted through the Office of General Counsel to the Deputy Director, OMB.

(b) Allegations and evidence shall be safeguarded so as to protect the privacy of former employees prior to a determination of sufficient cause to initiate an administrative disciplinary proceeding.

(c) If review by the Office of General Counsel, OMB, shows that the information concerning a possible violation does not appear to be frivolous, the Deputy Director, OMB, shall expeditiously provide all relevant evidence, any appropriate comments, and copies of applicable agency regulations to the director, Office of Government Ethics, and to the Criminal Division, Department of Justice. Unless the Department of Justice informs OMB that it does not intend to initiate criminal prosecution, OMB shall coordinate any investigation or administrative action with the Department of Justice in order to avoid prejudicing criminal proceedings.

(d) After appropriate review and recommendation by the Office of General Counsel, if the Deputy Director, OMB, determines that there is reasonable cause to believe that there has been a violation, the Deputy Director may direct the Office of General Counsel to intitiate an administrative disciplinary proceeding and may designate an individual to represent OMB in the proceeding.

(e) *Notice.* The Office of General Counsel shall provide the former Government employee with adequate notice of its intention to institute a proceeding and with an opportunity for a hearing. The notice must include a statement of allegations, and the basis thereof, in sufficient detail to enable the former Government employee to prepare an adequate defense; notification of the right to a hearing; and an explanation of the method by which a hearing may be requested.

(f) *Hearing.* A hearing may be obtained by submitting a written request to the Office of General Counsel.

(g) *Examiner.* The presiding official at the proceedings shall be the hearing examiner, who is delegated authority by the Director, OMB, to make an initial decision. The hearing examiner shall be an attorney in the Office of General Counsel designated by the General Counsel. The hearing examiner shall be impartial and shall not have participated in any manner in the decision to initiate the proceedings.

(h) *Time, Date and Place.* The hearing shall be conducted at a reasonable time, date, and place. The hearing examiner shall give due regard in setting the hearing date to the former Government employee's need for adequate time to properly prepare a defense and for an expeditious resolution of allegations that may be damaging to his reputation.

(i) *Hearing Rights.* The hearing shall include, as a minimum, the right to represent oneself or to be represented by counsel; the right to introduce and examine witnesses and to submit physical evidence; the right to confront and cross-examine adverse witnesses; the right to present oral argument; and, on request, the right to have a transcript or recording of the proceedings.

(j) *Burden of Proof.* OMB has the burden of proof and must establish substantial evidence of a violation.

(k) *Decision.* The hearing examiner shall make a decision based exclusively on matters of record in the proceedings. All findings of fact and conclusions of law relevant to the matters at issue shall be set forth in the decision.

(l) *Appeal within OMB.* Within 30 days of the date of the hearing examiner's decision, either party may appeal the decision to the Director. The Director shall make a decision on the appeal based solely on the record of the proceedings or on those portions of the record agreed to by the parties to limit the issues. If the Director modifies or reverses the hearing examiner's decision, he shall specify the findings of fact and conclusions of law that are different from those of the hearing examiner.

(m) *Administrative Sanctions.* Administrative sanctions may be taken if the former Government employee fails to request a hearing after receipt of adequate notice or if a final administrative determination of a violation of 18 U.S.C. 207 (a), (b) or (c) or regulations promulgated thereunder has been made. The Director may prohibit the former Government employee from appearance or communication with OMB on behalf of another for a period not to exceed five years (5 CFR 737.27(a)(9)(i)) or take other appropriate disciplinary action (5 CFR 737.27(a)(9)(ii)).

(n) *Judicial Review.* Any person found by an OMB administrative decision to have participated in a violation of 18 U.S.C. 207 (a), (b) or (c) or regulations promulgated thereunder may seek judicial review of the administrative decision.

SUBCHAPTER B—OMB DIRECTIVES

PART 1310—OMB AND FEDERAL MANAGEMENT CIRCULARS

Sec.
1310.1 Policy guidelines.
1310.3 Availability of circulars.
1310.5 List of current circulars.

AUTHORITY: EO 11541, 35 FR 10737, 3 CFR, 1966-1970 Comp., p. 939.

SOURCE: 44 FR 37913, June 29, 1979. Redesignated at 44 FR 60286, Oct. 19, 1979, unless otherwise noted.

§ 1310.1 Policy guidelines.

In carrying out its responsibilities, the Office of Management and Budget issues policy guidelines to Federal agencies to promote efficiency and uniformity in Government activities. These guidelines are normally in the form of circulars.

§ 1310.3 Availability of circulars.

We believe, for public awareness purposes, that publishing the following list of current circulars is worthwhile. Copies of individual circulars may be obtained by writing to the Office of Administration, Publications Unit, Room G-236, New Executive Office Building, Washington, D.C. 20503, or by calling 202-395-4660.

EDITORIAL NOTE: The telephone number listed above has been changed to: 202-395-7332.

§ 1310.5 List of current circulars.

(a) This index arranges the current OMB Circulars and Federal Management Circulars under OMB jurisdiction by key words in the titles of the directives and by a limited number of broader captions. Those Circular Nos. preceded with 73-, 74-, and 75- designate FMC's.

(b) This list includes all circulars in effect as of July 1, 1979.

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PART 1312—CLASSIFICATION, DOWN- GRADING, DECLASSIFICATION AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION

Subpart A—National Security Information—Classification and Declassification

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AUTHORITY: E.O. 12065, 43 FR 28949, 3 CFR, 1978 Comp., P. 190 as implemented by Information Security Oversight Office Directive, 43 FR 46280, October 5, 1978.

SOURCE: 44 FR 64783, Nov. 8, 1979, unless otherwise noted.

Subpart A—National Security Information—Classification and Declassification

§ 1312.1 Purpose and authority.

This part prescribes the procedures for the classification and declassification of national security information in the possession of the Office of Management and Budget (OMB). It is issued under authority of Executive Order 12065 (43 FR 28949, June 28, 1978) as implemented by Information Security Oversight Office Directive (43 FR 46280, October 5, 1978) and is applicable to all OMB employees.

§ 1312.2 Responsibilities.

The effectiveness of the classification and declassification program in OMB depends entirely on the amount of attention paid to it by supervisors and their staffs in those offices that possess or produce classified material. Officials who *originate* classified material are responsible for the proper assignment of a classification to that material and for a decision as to its declassification or downgrading. Officials who produce documents containing classified information must determine the *source of the classification* for that information and must insure that proper identity of that source is shown on the document. Custodians of classified material are responsible for its safekeeping and for insuring that such material is adequately marked as to current classification.

(a) *Security Officer.* Under the general direction of the Assistant to the Director for Administration, the Security Officer will supervise the administration of this section and will develop programs to assist in compliance with the Order. Specifically, he will: (1) Promote the correct understanding of this part by all employees and conduct initial briefings about security procedures and policies for new employees; (2) issue and keep current such classification guides and guidelines for review for declassification as are required by the Order; (3) conduct periodic reviews of classified documents produced and of areas where classified materials are stored, and provide assistance and guidance where necessary, and, (4) maintain a current listing of all officials who have been designated in writing to have Top Secret, Secret and Confidential original classification authority.

(b) *Heads of offices and division.* The head of each division or major organizational unit is responsible for the administration of the part within his or her area. Appropriate internal guidance should be issued to cover special or unusual conditions within an office.

§ 1312.3 Classification requirements.

U.S. Citizens must be kept informed about the activities of the Government. However, in the interest of our national security, certain official information must be subject to constraints on its dissemination or release. This information is classified in order to provide this protection. Information may not be considered for classification unless it concerns (a) military plans, weapons or operation, (b) foreign government information, (c) intelligence activities, sources, or methods, (d) foreign relations or foreign activities of the United States, (e) scientific, technological, or economic matters relating to the national security, (f) United States Government programs for safeguarding nuclear material or facilities, or, (g) other categories of information which are related to national security and which require protection against unauthorized disclosure as determined by the President, by a person designated by the President, or by an agency head. Even though information is determined to meet one or more of the criteria above, it may not be considered for classification unless an original classification authority determines that its unauthorized disclosure reasonably could be expected to cause at least identifiable damage to the national security.

§ 1312.4 Classification designations.

Except as provided in the Atomic Energy Act of 1954, the Order provides the only basis for classifying information. Information which meets the test for classification may be classified only in one of the following three designations. If there is reasonable doubt which designation is appropriate, or whether the information should be classified at all, the less restrictive designation should be used or the information should not be classified.

(a) TOP SECRET. This classification shall be applied only to information the unauthorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security.

(b) SECRET. This classification shall be applied only to information the unauthorized disclosure of which could reasonably be expected to cause serious damage to the national security, and,

(c) CONFIDENTIAL. This classification shall be applied only to information the unauthorized disclosure of which could reasonably be expected to cause identifiable damage to the national security.

§ 1312.5 Authority to classify.

The authority to *originally* classify information or material under these regulations shall be limited to those officials concerned with matters of national security. The officials listed below are granted authority by the Director, OMB, to assign original classifications as indicated to information or material that is originated by OMB staff, and relating to the national security of the United States:

(a) Top Secret and below:
(1) Deputy Director
(2) Executive Associate Director for Budget (EAD/B)
(3) Associate Director for National Security and International Affairs (AD/NSIA)
(4) Associate Director for Natural Resources, Energy and Science (AD/NRES)
(5) Deputy Associate Director for National Security (DAD/NS)
(b) Secret and below:
(1) Executive Associate Director for Reorganization. Management (EAD/RM)
(2) Deputy Associate Director for International Affairs (DAD/IA)
(3) Deputy Associate Director for Special Studies, National Security and International Affairs (DAD/SS/NSIA)
(4) Deputy Associate Director for Energy and Science (DAD/ES)
(5) Deputy Associate Director for Special Studies, Natural Resources, Energy and Science (DAD/SS/NRES)
(c) Confidential.
(1) Assistant Deputy Associate Director for National Security
(2) Assistant Deputy Associate Director for International Affairs.

(d) Classification authority is not delegated to those persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or by a classification guide.

§ 1312.6 Duration of classification.

Except for information qualifying for extended classification under OMB classification guides, each OMB original classification authority shall, at the time a document is classified, set a date or event for declassification no more than six years later. This date or event shall be shown on the face of the document. Only officials with original top secret classification authority may classify information for more than six years from the date of original classification. When material is thus extended beyond six years, the reason for the extension, and a date or event for declassification (or review for declassification) shall appear on the face of the document. This date or event shall be as early as national security permits, but shall be not more than 20 years from the date of original classification, except that foreign government information may be protected up to 30 years from date of original classification as provided in section 1-402 of the Order.

§ 1312.7 Derivative classification.

A "derivative classification" means that the information is in substance, the same information that is currently classified, usually by another agency or classification authority. The application of derivative classification markings is the responsibility of the person who incorporates, restates, paraphrases, or generate in new form information that is already classified, or who applies such markings in accordance with instructions from an authorized classifier or classification guide. So far as it is practicable, persons applying derivative classifications will, through checks with originators or other appropriate inquiries, determine whether such incorporation, paraphrasing, or restating, has removed the basis for classification, in which case the document may be assigned a lower classification or may be issued in unclassified form.

§ 1312.8 Standard identification and markings.

At the time classified material is produced, the following markings will be made as indicated:

(a) The office of origin and the date of the document will be placed on the cover or first page.

(b) The overall classification of the document will be stamped, marked, or permanently affixed at the top and bottom of the cover or first page.

(c) The overall classification of individual pages will be marked or stamped at the top and bottom of each page containing classified information.

(d) The classification of individual portions of the document, using the abbreviation, (TS), (S), (C), or (U), will be typed or marked at the end of each paragraph or section of the document.

(e) The identity of the original classifier of the information, unless also the signer of the document, will be shown on the "classified by" line. (See paragraph (h) of this section, for marking derivatively classified information.)

(f) The date or event for declassification or for review for declassification will be indicated on the line intended for that purpose.

(g) Downgrading markings, if applicable, will be placed immediately below the date or event for review for declassification line.

(h) If the document is derivatively classified, enter the identity of the original classifier on the "classified by" line, and continue the original classifier's guidance as to declassification. When the classification is derived from more than one source, the term "multiple sources" may be used, and the most distant date for review or declassification will be shown. These sources will be identified on the last page of the document, if feasible, but will always be listed on the official file copy of the document.

(i) Transmittal documents will be stamped to indicate the highest classification of the information transmitted, and the classification of the transmittal document standing alone.

(j) The classification data for material other than documents will be affixed by tagging, stamping, recording, or other means, to insure that recipients are aware of the requirement for the protection of the information.

(k) Additional markings required:

(1) Restricted Data, or Formerly Restricted Data, will be identified by such markings as may be prescribed by the Department of Energy.

(2) Documents revealing intelligence sources or methods will be identified by the notation, "Warning Notice—Intelligence Sources and Methods Involved."

(3) Limitations on dissemination and/or reproduction, as determined by the originator, will be noted in the text of the document, or on its cover sheet.

§ 1312.9 Downgrading and declassification.

Classified information originated by OMB offices will be downgraded or declassified as soon as it no longer qualifies for continued protection under the provisions of the Order. Authority to downgrade or declassify OMB-originated information is granted to those authorized to classify, (see § 1312.5). Additionally, the Assistant to the Director for Administration and the Security Officer are authorized to exercise downgrading and declassification actions up to and including the Top Secret level.

(a) *Transferred material.* Information which was originated by an agency that no longer exists, or that was received by OMB in conjunction with a transfer of functions, is deemed to be OMB-originated material. Information which has been transferred to another agency for storage purposes remains the responsibility of OMB.

(b) *Periodic review of classified material.* Each office possessing classified information will review that material on an annual basis, or in conjunction with the transfer of files to non-current record storage, and take action to downgrade or declassify all material no longer qualifying for continued protection at that level. All material transferred to non-current record storage must be properly marked with correct downgrading or declassification instructions.

§ 1312.10 Systematic review guidelines.

The Security Officer will prepare and keep current such guidelines as are required by the Order for the downgrading and declassification of OMB originated material that is 20 years old or older.

§ 1312.11 Challenges to classifications.

OMB employees are encouraged to familiarize themselves with the provisions of the Order and with this part. Employees are also encouraged to question or to challenge those classifications they believe to be improper, unnecessary, or for an inappropriate time. Such questions or challenges will normally be addressed to the originator of the information, unless the challenger desires to remain anonymous, in which case the challenge should be addressed to the Security Program Review Committee.

§ 1312.12 Security Program Review Committee.

The Assistant to the Director for Administration will chair the OMB Security Program Review Committee, which will act on suggestions and complaints about the OMB security program. This committee will also respond to challenges to classifications (see § 1312.11) when direct negotiations with the originator were not desired, or were unsatisfactory or nonproductive. Responses to such appeals will be made within 30 days of receipt.

Subpart B—Control and Accountability of Classified Information

§ 1312.21 Purpose.

This part prescribes procedures for the receipt, accountability, transmission, and access to classified information within the Office of Management and Budget.

§ 1312.22 Responsibilities.

The effective direction by supervisors and the alert performance of duty by employees will do much to assure the adequate security of classified information in the possession of OMB offices. Each employee has a responsibility to protect and account for all classified information that he or she knows of within his or her area of responsibility. Such information will be made available only to those who have official need to know, and who have been granted the appropriate security clearance by competent authority. Particular care must be taken not to discuss classified information over unprotected communications circuits (to include intercom or closed-circuit TV), at non-official functions, or at any time that it might be revealed to unauthorized persons. Classified information will not be entered into any computer system available to OMB offices.

§ 1312.23 Responsibilities.

(a) The Security Officer will supervise the administration of this part, to include:

(1) Promoting a correct understanding of this Section and conducting initial briefings about security procedures for all new employees.

(2) Providing for periodic inspections of office areas and reviews of produced documents to assure full compliance with OMB regulations and procedures.

(3) Taking prompt action to investigate alleged violations of security, and recommending appropriate administrative actions with respect to violators.

(4) Supervising the annual inventories of Top Secret material.

(5) Insuring that containers used to store classified information meet approved security standards and that combinations to security containers are changed as required.

(b) Head of offices or division within OMB are responsible for the administration of this part within their areas, including the maintenance of the prescribed control and accountability records for classified information and the establishment of internal procedures to insure that classified material is properly safeguarded at all times.

§ 1312.24 Access to classified information.

Classified information may be made available to a person only when the possessor of the information establishes that access is essential to the accomplishment of official government duties, and that the proposed recipient possesses a security clearance granted by competent authority.

§ 1312.25 Access by historical researchers and former Presidential appointees.

The procedure of classification requirements may be waived for persons who are engaged in historical research projects, or who previously have occupied policy-making positions to which they were appointed by the President. In these instances, the Security Officer will make a determination as to the trustworthiness of the requestor, and will obtain written agreement from the requestor to safeguard the information to which access is given. He will also obtain written consent to the review by OMB of notes and manuscripts for the purpose of determining that no classified information is contained therein. Upon the completion of these steps, the material to be researched will be reviewed by the division of primary interest to insure that access is granted only to material over which OMB has classification jurisdiction. Former Presidential appointees will be granted access only to that information that he or she originated, reviewed, signed, or received while serving as a Presidential appointee.

Subpart C—Mandatory Declassification Review

§ 1312.31 General.

Other government agencies and individual members of the public frequently request that classified information in OMB files be reviewed for possible declassification and release. This part prescribes the procedures for such review and subsequent release or denial.

§ 1312.32 Responsibility.

All requests for the mandatory review of classified information in OMB files should be addressed to the Assistant to the Director for Administration, Office of Management and Budget, Washington, DC 20503, who will acknowledge receipt of the request. When the request does not reasonably describe the information sought, the requestor will be notified that unless additional information is provided, or the scope of the request is narrowed, no further action will be taken.

§ 1312.33 Information in the custody of OMB.

Information contained in OMB files and under the exclusive declassification jurisdiction of OMB will be reviewed by the Assistant to the Director for Administration and/or the office of primary interest in the information, to determine whether, under the declassification provisions of Section 3-3 of the Order, the requested information may be declassified. If so, the information will be made available to the requestor unless withholding is otherwise warranted under applicable law. If the information may not be released in whole or in part, the requestor shall be given a brief statement as to the reasons for denial, a notice of the right to appeal the determination to the Director, Office of Management and Budget, and a notice that such an appeal must be filed within 60 days in order to be considered.

§ 1312.34 Information classified by another agency.

When a request is received for information that was classified by another agency, the Assistant to the Director for Administration will forward the request, along with any other related materials, to the appropriate agency for review and determination as to release. Recommendations as to release or denial may be made, if appropriate. The requestor will be notified of the referral, unless the receiving agency objects on the grounds that its association with the information requires protection.

§ 1312.35 Appeal procedure.

Appeals received as a result of a denial will be routed to the Deputy Director, who will take action as necessary to determine whether any part of the information may be declassified and if so, notify the requestor of his determination and make available that information that is declassified and otherwide releasable. If continued classification in whole is required, the requestor shall be notified by the Director of the reasons therefor.

§ 1312.36 Fees.

There will normally be no fees charged for the mandatory review of classified material for declassification under this part.

PART 1320—CONTROLLING PAPERWORK BURDENS ON THE PUBLIC

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APPENDIX A—AGENCIES WITH DELEGATED REVIEW AND APPROVAL AUTHORITY

AUTHORITY: 31 U.S.C. Sec. 18a and 44 U.S.C. Chs. 21, 25, 27, 29, 31, 35.

SOURCE: 48 FR 13689, Mar. 31, 1983, unless otherwise noted.

§ 1320.1 Purpose.

The purpose of this Part is to implement the provisions of the Paperwork Reduction Act of 1980 (Title 44 U.S.C. Chapter 35) (the Act) concerning collections of information. It is issued under the authority of Section 3516 of the Act, which provides that "The Director shall promulgate rules, regulations, or procedures necessary to exercise the authority provided by this Chapter." It is designed to minimize and control burdens associated with the collection of information by Federal agencies from individuals, businesses and other private institutions, and State and local governments. In the case of inter-agency reporting, this Part establishes policy and promulgates regulations to ensure the effective management of inter-agency reporting requirements in the executive branch, and is promulgated under the authority of the Federal Records Act (Title 44 U.S.C. Chapters 21, 25, 27, 29, 31) and Section 104 of the Budget and Accounting Procedures Act of 1950, (Title 31 U.S.C Section 1111, as well as the Act.

§ 1320.2 Effect.

This Part supersedes and rescinds Circular No. A-40, Revised, dated May 3, 1973, and Transmittal Memorandum No. 1, dated February 10, 1976. This Part will become effective on May 2, 1983.

§ 1320.3 Coverage.

The requirements of this Part apply to all agencies as defined in § 1320.7(a) and to all collections of information conducted or sponsored by those agencies, as defined in § 1320.7(c), wherever conducted or sponsored, except for collections of information:

(a) By compulsory process pursuant to the Anti-trust Civil Process Act or Section 13 of the Federal Trade Commission Improvements Act or Section 13 of the Federal Trade Commission Improvements Act of 1980;

(b) During the conduct of intelligence activities, as defined in Section 4-206 of Executive Order 12036, issued January 24, 1978, or successor orders, including Executive Order 12333, issued December 4, 1981, or during the conduct of cryptologic activities that are communications securities activities; or

(c) During the conduct of a federal criminal investigation or prosecution, during the disposition of a particular criminal matter, during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action or investigation involving an agency against specific individuals or entities. This exception applies during the entire course of the investigation or action, whether before or after formal charges or complaints are filed or formal administrative action is initiated, but only after a case file or its equivalent is opened with respect to a particular party. General collections of information prepared or undertaken with reference to a category of individuals or entities, such as a class of licensees or an industry, do not fall within this exception.

§ 1320.4 General requirements.

(a) An agency shall not engage in a collection of information without obtaining Office of Management and Budget (OMB) approval of the collection of information and displaying a currently valid OMB control number and, unless OMB determines it to be inappropriate, an expiration date. An agency shall not continue to engage in such collection of information after the expiration date of the control number, unless OMB has approved an extension. Each agency shall ensure that collections of information required by law or necessary to obtain a benefit, and which are submitted to nine or fewer persons, inform potential respondents that the collection of information is not subject to OMB review under the Act.

(b) To obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that:

(1) The collection of information is the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives;

(2) The collection of information is not duplicative of information otherwise accessible to the agency; and

(3) The collection of information has practical utility. The agency shall also seek to minimize the cost to itself of collecting, processing, and using the information, but shall not do so by means of shifting disproportionate costs or burdens onto the public. It shall also comply with the general information collection guidelines set out in § 1320.6, where applicable.

(c) OMB shall determine whether the collection of information, as submitted by the agency, is necessary for the proper performance of the agency's functions. In making this determination, OMB will take into account the criteria listed in § 1320.4(b), and will consider whether the burden of the collection of information is justified by its practical utility. In addition:

(1) OMB will consider necessary any collection of information specifically mandated by statute or court order, but will independently assess any collection of information to the extent that the agency exercises discretion in its implementation; and

(2) OMB will consider necessary any information collection request specifically required by an agency rule approved or not acted upon by OMB pursuant to §§ 1320.13 or 1320.14, but will independently assess any such information collection request to the extent that it deviates from the specifications of the rule.

(d) Except as provided in § 1320.19, to the extent that OMB determines that all or any portion of a collection of information by an agency is unnecessary, for any reason, the agency shall not engage in such collection or portion thereof.

§ 1320.5 Public Protection.

(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failure to comply with any information collection request if the request does not display a currently valid OMB control number, or, in the case of an information collection request which is submitted to nine or fewer persons, the request fails to state that for this reason it is not subject to OMB review under the Act.

(b) Notwithstanding any other provision of law, no person shall be subject to any penalty for failure to comply with any collection of information requirement if the requirement has been disapproved by OMB, unless that disapproval has been overridden by an independent regulatory agency pursuant to § 1320.19. After March 1, 1984, all collection of information requirements that have been submitted to OMB for clearance, and that have not been disapproved by OMB, will display a currently valid OMB control number. The absence of a control number on a collection of information requirement does not, as a legal matter, invalidate such requirement; however, its absence will alert the public that either the agency has failed to comply with applicable legal requirements for the collection of information or the collection of information requirement has been disapproved.

(c) Whenever an agency has imposed an information collection request or collection of information requirement as the means for proving or satisfying a condition to the receipt of a benefit or the avoidance of a penalty, and the information collection request does not display a currently valid OMB control number or statement, as prescribed in § 1320.4(a), or the collection of information requirement has been disapproved by OMB in accordance with the procedures established by this Part (and not overridden by an independent regulatory agency pursuant to § 1320.19), the agency shall not treat a person's failure to comply, in and of itself, as grounds for withholding the benefit or imposing the penalty. The agency shall instead permit respondents to prove or satisfy the legal conditions in any other reasonable manner.

(1) If such a collection of information is disapproved in whole by OMB (and the disapproval is not overridden pursuant to § 1320.19), the agency shall grant the benefit to (or not impose the penalty on) otherwise qualified persons without requesting further proof concerning the condition.

(2) If such a collection of information is ordered modified by OMB (and the order is not overridden pursuant to § 1320.19), the agency shall permit respondents to prove or satisfy the condition by complying with the collection of information as so modified.

(d) Whenever a member of the public is protected from imposition of a penalty under this section for failure to comply with a collection of information, such penalty may not be imposed by an agency directly, by an agency through judicial process, or by any other person through judicial or administrative process.

§ 1320.6 General information collection guidelines.

Unless the agency is able to demonstrate that such collection of information is necessary to satisfy statutory requirements or other substantial need, OMB will not approve a collection of information:

(a) Requiring respondents to report information to the agency more often than quarterly;

(b) Requiring respondents to prepare a written response to an information collection request or requirement in fewer than 30 days after receipt of it;

(c) Requiring respondents to submit more than an original and two copies of any document;

(d) Requiring grantees to submit or maintain information other than that required under OMB Circular A-102 or A-110;

(e) Providing for remuneration of respondents, other than contractors or grantees;

(f) Requiring respondents to retain records, other than health, medical, or tax records, for more than three years;

(g) In connection with a statistical survey that is not designed to produce results that can be generalized to the universe of study;

(h) Unless the agency has taken all practicable steps to develop separate and simplified requirements for small businesses and other small entities;

(i) Requiring respondents to submit proprietary, trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect its confidentiality to the extent permitted by law;

(j) Requiring respondents to maintain or provide information in a format other than that in which the information is customarily maintained.

§ 1320.7 Definitions.

For purposes of implementing the Paperwork Reduction Act and this Part, the following terms are defined as follows:

(a) "Agency" means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the government, or any independent regulatory agency, but does not include the General Accounting Office, Federal Election Commission, and governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions, or government-owned contractor-operated facilities including laboratories engaged in national defense research and production activities.

(b) "Burden" means the total time, effort, or financial resources required to respond to a collection of information, including that to read or hear instructions; to develop, modify, construct, or assemble any materials or equipment; to conduct tests, inspections, polls, observations, or the like necessary to obtain the information; to organize the information into the requested format; to review its accuracy and the appropriateness of its manner of presentation; and to maintain, disclose, or report the information.

(1) The time and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records), will be excluded from the "burden" if the agency demonstrates that the reporting or recordkeeping activities needed to comply are usual and customary.

(2) A collection of information sponsored by a federal agency that is also sponsored by a unit of state or local government is presumed to impose a federal burden except to the extent the agency shows that such state or local requirement would be imposed even in the absence of a federal requirement.

(c) "Collection of information" means the obtaining or soliciting of information by an agency from ten or more persons by means of identical questions, whether such collection of information is mandatory, voluntary, or required to obtain a benefit. For purposes of this definition, the "obtaining or soliciting of information" includes any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information. "Collections of information" are of two mutually exclusive types: "collection of information requirements" and "information collection requests."

(1) A "collection of information" includes the use of written report forms, application forms, schedules, questionnaires, reporting or recordkeeping requirements, or other similar methods. Similar methods may include contracts, agreements, policy statements, plans, rules or regulations, planning requirements, circulars, directives, instructions, bulletins, requests for proposal or other procurement requirements, interview guides, disclosure requirements, labeling requirements, telegraphic or telephonic requests, and standard questionnaires used to monitor compliance with agency requirements.

(2) Requirements by an agency or a person to obtain or compile information for the purpose of disclosure to members of the public or to the public at large, through posting, notification, labeling, or similar disclosure requirements, constitute the "collection of information" whenever the same requirement to obtain or compile information would be a "collection of information" if the information were directly provided to the agency. The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within this definition.

(3) A "collection of information" also includes questions posed to agencies, instrumentalities, or employees of the United States, if the results are to be used for general statistical purposes.

(d) "Collection of information requirement" is the term used for the collection of information by means of agency rule adopted after public notice and comment. The term comprises any form or other written instrument for the collection of information that is published as a part of the rule.

(e) "Director" means the Director of OMB or his designee.

(f) "Display" means:

(1) In the case of forms, questionnaires, instructions, and other written information collection requests individually distributed to potential respondents, to print the OMB control number (and, unless OMB determines it to be inappropriate, the expiration date) in the upper right hand corner of the front page of the request;

(2) In the case of collections of information published in regulations, guidelines, and other issuances in the FEDERAL REGISTER to publish the OMB control number in the FEDERAL REGISTER (as part of the regulatory text or as a technical amendment) and ensure that it will be included in the Code of Federal Regulations if the issuance is also included therein;

(3) In other cases, and where OMB determines that special circumstances

exist, to use other means to inform potential respondents of the OMB control number (and, unless OMB determines it to be inappropriate, the expiration date).

(g) An "Education agency or institution" means any public or private agency or institution with the primary function of education.

(h) "A Federal education program" means any federal activity with a primary purpose of offering instruction or affecting an educational agency's or institution's ability to offer instruction.

(i) "Independent regulatory agency" means the Board of Governors of the Federal Reserve System, the Civil Aeronautics Board, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the Federal Home Loan Bank Board, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Rate Commission, the Securities and Exchange Commission, National Credit Union Administration, and any other similar agency designated by statute as a Federal independent regulatory agency or commission.

(j) "General purpose statistics" are those collected chiefly for public and general government uses, without primary reference to policy or program operations of the agency collecting the information.

(k) "Information" means any statement of fact or opinion, whether in numerical, graphic, or narrative form, and whether oral or maintained on paper, magnetic tapes, or other media. "Information" does not generally include items in the following categories; however, OMB may determine that any specific item constitutes "information":

(1) Affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments, provided that they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument;

(2) Samples of products or of any other physical objects;

(3) Facts or opinions obtained through direct observation by an employee or agent of the sponsoring agency or through nonstandardized oral communication in connection with such direct observations;

(4) Facts or opinions submitted in response to general solicitations of comments from the public, published in the FEDERAL REGISTER or other publications, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition to the agency's full consideration of the comment;

(5) Facts or opinions obtained initially or in follow-on requests, from individuals (including individuals in control groups) under treatment or clinical examination in connection with research on or prophylaxis to prevent a clinical disorder, direct treatment of that disorder, or the interpretation of biological analyses of body fluids, tissues, or other specimens, or the identification or classification of such specimens;

(6) A request for facts or opinions addressed to a single person;

(7) Examinations designed to test the aptitude, abilities, or knowledge of the persons tested and the collection of information for identification or classification in connection with such examinations;

(8) Facts or opinions obtained or solicited at or in connection with public hearings or meetings;

(9) Facts or opinions obtained or solicited through nonstandardized follow-up questions designed to clarify responses to approved collections of information;

(10) Like items so designated by the Director.

(l) "Information collection request" means the method by which an agency communicates the specifications for a collection of information to potential respondents, including a written report form, application form, schedule, questionnaire, oral communication, reporting or recordkeeping requirement, or other similar method.

(m) "Interagency reporting requirement" means any requirement that an agency report information to another agency or agencies.

(n) "Modify" means to approve in part and disapprove in part.

(o) "Penalty" means the imposition by an agency or court of a fine or other punishment; judgment for monetary damages or equitable relief; or revocation, suspension, reduction, or denial of a license, privilege, right, grant, or benefit.

(p) "Person" means an individual, partnership, association, corporation, (including operations of government owned contractor-operated facilities), business trust, legal representative, organized group of individuals, state, territory, or local government or component thereof. Current employees of the federal government are excluded from this definition for purposes of the collection of information within the scope of their employment. Military reservists and members of the National Guard are considered Federal employees when on active duty, and for purposes of obtaining information about duty status. Retired and other former federal employees are included entirely within the definition of "person."

(q) "Practical utility" means the actual, not merely the theoretical or potential, usefulness of information to an agency, taking into account its accuracy, adequacy, and reliability, and the agency's ability to process the information in a useful and timely fashion. In determining whether information will have "practical utility," OMB will take into account whether the agency demonstrates actual timely use for the information either to carry out its functions or to make it available to the public, either directly or by means of a public disclosure or labeling requirement, for the use of persons who have an interest in entities or transactions over which the agency has jurisdiction. In the case of general purpose statistics or recordkeeping requirements, "practical utility" means that actual uses can be demonstrated.

(r) "Recordkeeping requirement" means a requirement imposed by an agency on persons to maintain specified records and includes requirements that information be maintained or retained by persons but not necessarily provided to an agency.

(s) "Reporting requirement" means a requirement imposed by an agency on persons to provide information to another person or to the agency. Reporting requirements may implicitly or explicitly include related recordkeeping requirements.

(t) "Sponsor." A federal agency is considered to "sponsor" the collection of information if the agency collects the information, causes another agency to collect the information, contracts or enters into a cooperative agreement with a person to collect the information, or requires a person to provide information to another person. A collection of information undertaken by a recipient of a federal grant is considered to be "sponsored" by an agency only if:

(1) The recipient of a grant is collecting information at the specific request of the agency; or

(2) The terms and conditions of the grant require specific approval by the agency of the collection of information or the collection procedures.

(u) "Ten or more persons" refers to the persons to whom an information collection request is addressed by the agency within any 12-month period, and to any independent entities to which the initial addressee may reasonably be expected to transmit the request during that period, including independent state or local entities and separately incorporated subsidiaries or affiliates, but not including employees of the respondent within the scope of their employment, or contractors engaged for the purpose of complying with the information collection request.

(1) Any recordkeeping or reporting requirement contained in a rule of general applicability is deemed to involve ten or more persons.

(2) Any information collection request addressed to all or a substantial majority of an industry is presumed to involve ten or more persons.

§ 1320.8 Agency Head and Senior Official responsibilities.

(a) Except as provided in § 1320.8(b) of this section, each agency head shall designate a Senior Official to carry out the responsibilities of the agency under the Act.

(1) The Senior Official shall report directly to the head of the agency and shall have the authority, subject to that of the agency head, to carry out the responsibilities of the agency under the Act and this Part.

(2) The Senior Official shall independently assess all collections of information to ensure that they meet the criteria specified in § 1320.4(b) and that the agency conducts no collection of information that does not display a currently valid OMB control number.

(b) An agency head may retain full undelegated review authority for any component of the agency which by statute is required to be independent of any agency official below the agency head. For each component for which responsibility under the Act is not delegated to the Senior Official, the agency head shall be responsible for the performance of those functions.

(c) Upon request of the Director, the head or the Senior Official of each agency (other than an independent regulatory agency) shall make its services, personnel, and facilities available to OMB for the performance of Paperwork Reduction Act functions, unless such head or Senior Official determines in writing that the provision of such resources is impracticable.

§ 1320.9 Delegation of approval authority.

(a) The Director may, after complying with notice and comment procedures of Title 5 U.S.C. Chapter 5, delegate OMB review of some or all of an agency's collections of information to the Senior Official, or to the agency head with respect to those components of the agency for which he has not delegated authority.

(b) No delegation of review authority shall be made unless the agency demonstrates to OMB that the Senior Official or agency head to whom the authority would be delegated:

(1) Is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved, and

(2) Has sufficient resources to carry out this responsibility effectively.

(c) OMB may limit, condition, or rescind, in whole or in part, at any time, such delegations of authority, and reserves the right to review any individual collection of information, or part thereof, sponsored by an agency, at any time.

(d) Subject to the provisions of this part, and in accord with the terms and conditions of each delegation as specified in Appendix A to this part, the Director delegates review and approval authority to the following agencies:

(1) Board of Governors of the Federal Reserve System.

[48 FR 13689, Mar. 31, 1983, as amended at 49 FR 20793, May 16, 1984]

§ 1320.10 Information collection budget.

Each agency's Senior Official, or agency head in the case of any agency for which the agency head has not delegated responsibility under the Act for any component of the agency to the Senior Official, shall develop and submit to OMB, in such form and in accordance with such procedures as OMB may prescribe, an annual comprehensive budget for all collections of information from the public to be conducted or sponsored by the agency in the succeeding twelve months. If during the course of such year, the agency proposes a collection of information not included in the annual budget, it shall, in accordance with such instructions as OMB may provide, either make offsetting reductions in other items in the budget or obtain supplemental authorization for the additional collection. For good cause, and where it is possible to meet its statutory responsibilities by other means, OMB may exempt any agency from this requirement.

§ 1320.11 Agency submissions of collections of information.

(a) Agency submissions of collections of information for OMB review may only be made by the agency head or Senior Official, or their designee. Submissions shall be made in accordance with such procedures and in such form as the Director may prescribe. Submissions shall provide sufficient information to permit consideration of the criteria set out in § 1320.4 (b) and (c), shall include an estimate of burden, calcuated in a manner prescribed by OMB, shall identify any significant burdens placed on a substantial number of small businesses or other small entities, and shall contain such additional supporting material as the Director may request.

(b) Agencies shall provide copies of the material submitted to OMB for review promptly upon request by any person.

(c) OMB shall review all agency submissions in accordance with the standards set forth in § 1320.4 (b) and (c).

(d) In determining whether to approve, disapprove, modify, review, initiate proposals for changes in or stay the effectiveness of its approval of, any collection of information, OMB shall consider any public comments received, and may provide the agency and interested persons additional opportunities to be heard or to submit statements in writing.

(e) Agencies shall submit collections of information contained in proposed rules published for public comment in the FEDERAL REGISTER in accordance with the requirements set forth in § 1320.13. Agencies shall submit collections of information contained in current regulations that were published as final rules in the FEDERAL REGISTER in accordance with the requirements set forth in § 1320.14. Agencies shall submit information collection requests other than those contained in regulations published as final rules in the FEDERAL REGISTER, in accordance with the requirements set forth in § 1320.12. Special rules for clearance and inventory of collections of information prescribed by an agency, but collected by another agency, are set forth in § 1320.15. Special rules for emergency processing of information collection requests are set forth in § 1320.17.

(f) Prior to the expiration date assigned to a collection of information, after consultation with the agency, OMB may decide to review the collection of information, and shall so notify the agency. Such decisions will be made only when relevant circumstances have changed or the burden estimates provided by the agency at the time of the initial submission were materially in error. Upon such notification, the agency shall submit the information collection request or requirement for review under the procedures outlined in § 1320.12 or § 1320.14. The agency may continue to sponsor the collection of information while the submission is pending. For good cause, after consultation with the agency, OMB may stay the effectiveness of its approval of any information collection request not specifically required by agency rule, whereupon the agency shall cease sponsoring such request while the submission is pending, and shall publish a notice in the FEDERAL REGISTER to that effect.

(g) Whenever the persons to whom a collection of information is addressed are primarily educational agencies or institutions or whenever the purpose of such activities is primarily to request information needed for the management or formulation of policy related to federal education programs, or research or evaluation studies related to implementation of federal education programs, the collection of information shall be submitted to OMB in accordance with the procedures outlined in this Part. Such request or requirement will be reviewed by the Federal Education Data Acquisition Council (FEDAC), or organizational unit fulfilling the same statutory function within the Department of Education, prior to approval or disapproval by OMB. Collections of information addressed to educational agencies or institutions and submitted to the Secretary of Education under the provisions of Title 20 U.S.C. Section 1221-3 shall be submitted by the Secretary of Education to OMB for approval in accordance with procedures contained in this Part, in time to receive OMB approval and to be announced publicly by the agency by the February 15 preceding the school year in which the information is to be collected.

(h) No substantive or material modification may be made by an agency in an information collection request or requirement after it has been assigned an OMB control number unless the modification has been submitted to OMB for review and approval pursuant to the procedures outlined in this Part.

(i) OMB will reconsider its disapproval of a collection of information upon the written request of an agency head or Senior Official only if the sponsoring agency can provide significant new or additional information relevant to the original decision.

(j) For purposes of time limits for OMB review of collections of information, any submission received by OMB after 12:00 noon will be deemed to have been received on the following business day.

§ 1320.12 Clearance of information collection requests.

Agencies shall submit all collections of information, other than those contained in proposed rules published for public notice and comment, or in current regulations that were published as final rules in the FEDERAL REGISTER, in accordance with the following requirements:

(a) On or before the day of submission to OMB, the agency shall forward a notice to the FEDERAL REGISTER stating that OMB approval is being sought. The notice shall direct requests for information, including copies of the proposed information collection request and supporting documentation, to the agency, and shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]. A copy of the notice submitted to the FEDERAL REGISTER, together with the date of expected publication, shall be included in the agency's submission to OMB.

(b) Within 60 days of its receipt of a proposed information collection request, OMB shall notify the agency involved of its decision to approve, modify, or disapprove the request and shall make such decision publicly available. OMB may extend this 60-day period for an additional 30 days upon notice to the agency. Upon approval of an information collection request, OMB shall assign a control number and an expiration date. OMB shall not approve any information collection request for a period longer than three years.

(c) If OMB fails to notify the agency of its approval, disapproval, or extension of review within the 60-day period (or 90-day period if notice of an extended review has been given), the agency may request, and OMB shall assign without further delay, a control number, which shall be valid for not more than one year.

(d) No information collection request may become effective until the agency has displayed a valid OMB control number (and, unless OMB determines it to be inappropriate, an expiration date).

§ 1320.13 Clearance of collection of information requirements in proposed rules.

Agencies shall submit collection of information requirements contained in proposed rules published for public comment in the FEDERAL REGISTER in accordance with the following requirements:

(a) The agency shall include in the preamble to the Notice of Proposed Rulemaking a statement that the collection of information requirements contained in the rule have been submitted to OMB for review under Section 3504(h) of the Act. The statement shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency].

(b) All such submissions shall be made to OMB not later than the day on which the Notice of Proposed Rulemaking is published in the FEDERAL REGISTER, in such form and in accordance with such procedures as the Director may direct. Such submissions shall include a copy of the proposed regulation and preamble.

(c) Within 60 days of publication of the proposed rule, OMB may file public comments on collection of information provisions. Such comments shall be in the form of an OMB Notice of Action, which shall be sent to the Senior Official or agency head, or their designee, and which shall be made a part of the agency's rulemaking record.

(d) If an agency submission is not in compliance with paragraph (b) of this section, OMB may disapprove the collection of information requirement in the proposed rule within 60 days of receipt of the submission. If an agency fails to submit a collection of information requirement subject to this Section, OMB may disapprove it at any time.

(e) When the final rule is published in the FEDERAL REGISTER, the agency shall explain how the final rule responds to any comments received from OMB or the public. The agency shall include an identification and explanation of any modifications made in the rule, or explain why it rejected the comments. If requested by OMB, the agency shall include OMB's comments in the preamble to the final rule.

(f) If OMB has not filed public comments pursuant to § 1320.13(c), or has approved the collection of information requirement contained in a rule before the final rule is published in the FEDERAL REGISTER, OMB may assign a control number prior to publication of the final rule, and the agency may display the number in its publication of the final rule.

(g) On or before the date of publication of the final rule, the agency shall submit the final rule to OMB, unless it has been approved pursuant to § 1320.13(f) (and not substantively or materially modified by the agency after approval). Not later than 60 days after publication OMB shall approve, modify, or disapprove the collection of information requirement contained in the final rule. Any such disapproval may be based on one or more of the following reasons, as determined by OMB:

(1) The agency failed to comply with paragraph (b) of this section;

(2) The agency had substantially modified the collection of information requirement contained in the final rule from that contained in the proposed rule, without providing OMB with notice of the change of sufficient information to make a determination concerning the modified collection of information requirement, at least 60 days before publication of the final rule; or

(3) In cases where OMB had filed public comments pursuant to paragraph (c) of this section, the agency's response to such comments was unreasonable, and the collection of information is unnecessary for the proper performance of the agency's functions.

(h) After making such decision to approve, modify, or disapprove a collection of information requirement, OMB shall so notify the agency. If OMB approves the collection of information requirement, or if it has not acted upon the submission within the time limits of this Section, OMB shall assign a control number. If OMB disapproves the collection of information requirement, it shall make the reasons for its decision publicly available.

(i) OMB shall not approve any collection of information requirement for a period longer than three years. Approval of any collection of information submitted under this Section will be for the full three-year period, unless the Director determines that there are special circumstances requiring approval for a shorter period.

(j) After receipt of notification of OMB's approval, disapproval, or failure to act, and prior to the effective date of the rule, the agency shall publish a notice in the FEDERAL REGISTER to inform the public of OMB's decision. If OMB has approved or failed to act upon the collection of information requirement, the agency shall include the OMB control number in such notice. A collection of information requirement may not become effective until OMB has assigned a control number, and such number is displayed.

§ 1320.14 Clearance of collections of information in current rules.

Agencies shall submit reporting and recordkeeping requirements contained in current regulations that were published as final rules in the FEDERAL REGISTER in accordance with the following procedures:

(a) Collections of information not previously reviewed by OMB or the General Accounting Office, and not assigned currently valid control numbers, shall be submitted to OMB for review prior to December 31, 1983 in accordance with an orderly schedule to be developed by the agency with OMB concurrence. Previously approved collections of information subject to this section shall be submitted not later than 90 days before the expiration date of the OMB control number assigned to the collection.

(b) On or before the day of submission to OMB, the agency shall forward a notice to the FEDERAL REGISTER stating that OMB review is being sought. The notice shall direct requests for information, including copies of the collection of information and supporting documentation, to the agency, and shall direct comments to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for [name of agency]. A copy of the notice submitted to the FEDERAL REGISTER, together with the date of expected publication, shall be included in the agency's submission to OMB.

(c) Within 60 days of its receipt of a collection of information submission, OMB shall notify the agency involved of its decision whether to approve or to initiate proposals for change in the collection and shall make such decision publicly available. OMB may extend this 60-day period for an additional 30 days upon notice to the agency. Upon approval of a collection of information, OMB shall assign a control number and an expiration date.

(d) OMB shall not approve any collection of information for a period longer than three years. Approval of any collection of information submitted under this Section will be for the full three year period, unless the Director determines that there are special circumstances requiring approval for a shorter period.

(e) If OMB fails to notify the agency of its approval, decision to initiate proposals for change, or extension of review within the 60-day period (or 90-day period if notice of an extended review has been given), the agency may request, and OMB shall assign without further delay, a control number, which shall be valid for not more than one year. Upon assignment of a control number by OMB, the agency shall display such number in accordance with § 1320.7(f)(2).

(f) If OMB has notified the agency of a decision to initiate proposals for change in the collection of information it shall extend the existing approval of the collection for the duration of the period required for consideration of proposed changes, including that required for OMB approval or disapproval of the collection of information under § 1320.12(b) or § 1320.13(g), as appropriate. In the case of a collection of information not previously approved, a control number shall be granted for such period. The agency shall publish a notice on the agency's next practicable publication date in the FEDERAL REGISTER to inform the public that OMB has initiated proposals for change in the collection, and has granted or extended its approval of the collection of information.

(g) Thereafter, the agency shall, within a reasonable period of time not to exceed 120 days, undertake such procedures as are necessary in compliance with the Administrative Procedure Act and other applicable law to amend or rescind the collection of information, and shall notify the public through the FEDERAL REGISTER. Such notice shall identify the proposed changes in the collections of information and shall solicit public comment on retention, modification, or rescission of such collections of information. If the agency employs notice and comment rulemaking procedures for amendment or rescission of the requirement, publication of the above in the FEDERAL REGISTER and submission to OMB shall initiate OMB clearance procedures under Section 3504(h) of the Act and § 1320.13. If the agency does not employ notice and comment rulemaking procedures for amendment or rescission of the collection of information, publication of such notice and submission to OMB shall initiate OMB clearance procedures under Section 3507 of the Act and § 1320.12. All procedures shall be completed within a reasonable period of time to be determined by OMB in consultation with the agency.

(h) OMB may disapprove in whole or in part, any collection of information subject to the procedures of this section if the agency:

(1) Has refused within a reasonable time to comply with an OMB directive

to submit the collection of information for review;

(2) Has refused within a reasonable time to initiate procedures to change the collection of information; or

(3) Has refused within a reasonable time to publish a final rule containing the collection of information, with such changes as may be appropriate, or otherwise complete the procedures for amendment or rescission of the collection of information.

(i) Upon disapproval by OMB of a collection of information subject to this section, the OMB control number assigned to such collection shall immediately expire, and no agency shall conduct or sponsor such collection of information. Any such disapproval shall constitute disapproval of the collection of information request or requirement contained in the Notice of Proposed Rulemaking or other submissions, and also of the preexisting request or requirement directed at the same collection of information and therefore constituting essentially the same request or requirement.

§ 1320.15 Collections of information prescribed by another agency.

(a) Any collection of information prescribed by an agency and to be adopted as a Standard or Optional Form after approval by the General Services Administration (GSA) shall be submitted to OMB for approval through GSA in accordance with such procedures and in such form as the Director may prescribe.

(1) Standard and Optional Forms used for the collection of information must be approved by OMB and assigned a currently valid control number before they can be used.

(2) GSA, with the assistance of the agencies using the forms, shall submit annually to OMB a list of all Standard and Optional Forms in use during that year for the collection of information from the public, stating which agencies use these forms, the number of each form used by each agency, and an estimate of the burden required to complete each form. Burden estimates developed by GSA will be counted as burden imposed by each agency in proportion to the use of the information.

(b) Any other collections of information prescribed by an agency but collected by another agency or agencies shall be submitted to OMB for approval by the agency that prescribes the collection, in accordance with such procedures and in such form as the Director may prescribe. With the assistance of the agencies collecting the information, the agency making the submission shall inform OMB of which agencies collect the information and an estimate of the burden of the collection of information. Burden estimates developed by the submitting agency will be counted as burden imposed by each agency in proportion to their use of the information.

(c) In other respects, collections of information under this Section shall be treated under the standards and procedures of § 1320.11-14, as appropriate.

§ 1320.16 Interagency reporting.

In accordance with authorities in the Act, the Federal Records Act, and the Budget and Accounting Procedures Act, the General Services Administration (GSA) is directed to issue regulations or requirements for the management of interagency reporting and provide for the approval and clearance of interagency reporting, whether mandatory or voluntary. Upon request, GSA shall report to the Director on the status of interagency reporting. Judicial branch requirements contained in court orders or decrees and OMB and other Executive Office of the President requirements shall be exempt from the provisions of this section.

§ 1320.17 Emergency and expedited processing.

An agency head or the Senior Official may request emergency processing of submissions of information collection requests.

(a) Any such request shall be accompanied by a written determination that the collection of information is essential to the mission of the agency, and that public harm will result if normal clearance procedures are followed, or that an unanticipated event has occurred which will prevent or disrupt the collection of information or cause a statutory or judicial deadline to be missed if normal procedures are followed.

(b) The agency shall state the time period within which OMB should approve or disapprove the collection of information.

(c) The agency shall submit information indicating that it has taken all practicable steps to consult with interested agencies and members of the public in order to minimize the burden of the collection of information.

(d) OMB shall approve or disapprove each such submission within the time period stated under § 1320.17(b), provided such time period is consistent with the purposes of the Act.

(e) If OMB approves the collection of information it shall assign a control number valid for a maximum of 90 days after receipt of the agency submission.

(f) Upon request by an agency, OMB may agree to act on a collection of information submission on an expedited schedule, even though such submission may not qualify for emergency processing under this section.

§ 1320.18 Public access.

(a) In order to enable the public to participate in and provide comments during the clearance process, OMB will ordinarily make its paperwork docket files available for public inspection during normal business hours. Notwithstanding other provisions of this rule, requirements to publish public notices or to provide materials to the public may be modified or waived by the Director to the extent that public participation in the approval process would defeat the purpose of the collection of information; jeopardize the confidentiality of proprietary, trade secret, or other confidential information; violate state or federal law; or substantially interfere with an agency's ability to perform its statutory obligations. Provisions of this paragraph guaranteeing public availability of comments on agency collections of information will not be waived or modified.

(b) Agencies conducting or sponsoring an information collection request shall take reasonable steps to inform potential respondents of the identity of the federal agency sponsoring any collection of information, why the information is being collected, how it is to be used, whether responses to the request are voluntary, required to obtain or retain a benefit (citing authority), or mandatory (citing authority), and the nature and extent of confidentiality to be provided, if any (citing authority).

§ 1320.19 Independent regulatory agency override authority.

An independent regulatory agency may override OMB's disapproval or stay of effectiveness of approval of a collection of information by majority vote of its members or commissioners. The agency shall certify any such override to the Director, and shall explain in writing its reasons for exercising the override authority. OMB shall promptly assign an OMB control number, valid for the length of time requested by the agency, up to three years, to any information collection request or collection of information requirement as to which this authority is exercised. No override shall become effective until the independent regulatory agency has displayed the OMB control number.

§ 1320.20 Other authority.

(a) The Director shall determine whether any collection of information or other matter is within the scope of the Act, or of this Part.

(b) In appropriate cases, after consultation with the agency, the Director may initiate a rulemaking proceeding to determine whether an agency's collection of information is consistent with statutory standards. Such proceedings shall be in accordance with informal rulemaking procedures under Title 5 U.S.C. Chapter 5.

(c) Each agency is responsible for complying with the information policies, principles, standards, and guidelines prescribed by the Director.

(d) To the extent permitted by law, the Director may waive any requirements contained in this Part.

(e) Nothing in this Part shall be interpreted to limit the authority of the Director under the Paperwork Reduc-

tion Act of 1980 or any other law. Nothing in this Part or the Paperwork Reduction Act shall be interpreted as increasing or decreasing the authority of OMB with respect to the substantive policies and programs of the agencies.

APPENDIX A—AGENCIES WITH DELEGATED REVIEW AND APPROVAL AUTHORITY

1. The Board of Governors of the Federal Reserve System.

(a) Authority to review and approve collection of information requests, collection of information requirements, and collections of information in current rules is delegated to the Board of Governors of the Federal Reserve System.

(1) This delegation does not include review and approval authority over any new collection of information or any modification to an existing collection of information that:

(i) Is proposed to be collected as a result of a requirement or other mandate of the Federal Financial Institutions Examination Council, or other Federal executive branch entities with authority to require the Board to conduct or sponsor a collection of information.

(ii) Is objected to by another Federal agency on the grounds that that agency requires information currently collected by the Board, that the currently collected information is being deleted from the collection, and the deletion will have a serious adverse impact on the agency's program provided that such objection is certified to OMB by the head of the Federal agency involved, with a copy to the Board, before the end of the comment period specified by the Board on the FEDERAL REGISTER notices specified in (3)(i) below.

(iii) Would cause the burden of the information collections conducted or sponsored by the Board to exceed by the end of the fiscal year the Information Collection Budget allowance provided to the Board by OMB for the fiscal year-end.

(2) The Board may ask that OMB review and approve collections of information covered by this delegation.

(3) In exercising delegated authority, the Board will:

(i) Provide the public, to the extent possible and appropriate, with reasonable opportunity to comment on collections of information under review prior to taking final action approving the collection. Reasonable opportunity for public comment will include publishing a notice in the FEDERAL REGISTER informing the public of the proposed collection of information, notifying the public of the availability of copies of the "clearance package," and providing the public with the opportunity to comment. Such FEDERAL REGISTER notices shall also advise the public that they may also send a copy of their comments to the OMB/OIRA Desk Officer for the Federal Reserve Board.

(A) Should the Board determine that a new collection of information or a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's ability to perform its statutory obligation, the Board may approve of the collection of information without providing opportunity for public comment. At the earliest practical date after approving the collection of information, the Board will publish a FEDERAL REGISTER notice informing the public of its approval of the collection of information and indicating why immediate action was necessary.

(B) In such cases, before taking final action to reauthorize the collection of information for an additional period, the Board will take into account any comments received after the institution of the collection.

(ii) Provide the OMB desk officer for the Federal Reserve Board with a copy of the Board's FEDERAL REGISTER notice not later than the day the Board files the notice with the Office of the Federal Register.

(iii) Assure that approved collections of information are reviewed not less frequently than once every three years, and that such reviews are normally conducted before the expiration date of the prior approval. Where the review has not been completed prior to the expiration date, the Board may extend the report, for up to three months, without public notice in order to complete the review and consequent revisions, if any. There may also be other circumstances in which the Board determines that a three-month extension without public notice is appropriate.

(iv) Take every reasonable step to ensure that the collection of information conforms to the requirements of 5 CFR 1320.4(b). In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies. The Board will not approve a collection of information that it determines does not satisfy the guidelines set forth in 5 CFR 1320.6, unless it determines that departure from these guidelines is necessary to satisfy statutory requirements or other substantial need.

(v) Assure that each approved collection of information displays an OMB control number and that all collections of information, except those contained in regulations, display the expiration date of the approval.

(vi) Assure that each approved collection of information, together with a completed

SF83, a supporting statement, a copy of each comment received from the public and other agencies in response to the Board's FEDERAL REGISTER notice or a summary of these comments, and a certification that the Board has approved of the collection of information in accordance with the provisions of this delegation is transmitted to OMB for incorporation into OMB's public docket files. Such transmittal shall be made as soon as practical after the Board has taken final action approving the collection. However, no collection of information may be instituted until the Board receives written or oral notification from OMB or OMB staff that the transmittal has been received.

(b) OMB will:

(1) Provide the Board in advance with a block of control numbers which the Board will assign in sequential order to, and display on, new collections of information.

(2) Provide a written notice of action to the Board indicating that Board approvals of collections of information have been received by OMB and incorporated into OMB's public docket files and inventory of currently approved collections of information.

(3) Review any collection of information referred by the Board in accordance with the provisions of section 1(a)(2) of this appendix.

(c) OMB may review the Board's paperwork review process under the delegation. The Board will cooperate in carrying out such a review. The Board will respond to any recommendations resulting from such review and, if it finds the recommendations to be appropriate, will either accept the recommendations or propose an alternative approach to achieve the intended purpose.

(d) This delegation may, as provided by 5 CFR 1320.9(c), be limited, conditioned, or rescinded, in whole or in part at any time. OMB will exercise this authority only in unusual circumstances and, in those rare instances, will do so, subject to the provisions of 5 CFR 1320.11(f), prior to the expiration of the time period set for public comment in the Board's FEDERAL REGISTER notices *and* generally only if:

(1) Prior to the commencement of a Board review (*e.g.*, during the ICB review), OMB has notified the Board that it intends to review a specific new proposal for the collection of information or the continued use (with or without modification) of an existing collection;

(2) There is substantial public objection to a proposed information collection; or

(3) OMB determines that a substantially inadequate and inappropriate lead time has been provided between the final announcement date of the proposed requirement and the first date when the information is to be submitted or disclosed.

When OMB exercises this authority it will consider that the period of its review began the day that OMB received the FEDERAL REGISTER notice provided for in section 1(a)(3)(i) of this Appendix.

(e) Where OMB conducts a review of a Board information collection proposal under section 1(a)(1), 1(a)(2), or 1(d) of this Appendix, the provisions of 5 CFR 1320.17 and 5 CFR 1320.19 continue to apply.

[49 FR 20793, May 16, 1984]

CHAPTER IV—ADVISORY COMMITTEE ON FEDERAL PAY

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PART 1410—RULES AND REGULATIONS TO IMPLEMENT THE PRIVACY ACT OF 1974

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Authority: Pub. L. 93-579; 5 U.S.C. 552a.

Source: 42 FR 2299, Jan. 11, 1977, unless otherwise noted.

§ 1410.1 Purpose and scope.

The purposes of these regulations are to:

(a) Establish a procedure by which an individual can determine if the Advisory Committee on Federal Pay (hereafter known as the Committee) maintains a system of records which includes a record pertaining to the individual; and

(b) Establish a procedure by which an individual can gain access to a record pertaining to him or her for the purpose of review, amendment and/or correction.

§ 1410.2 Definitions.

For the purpose of these regulations—

(a) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term "maintain" includes maintain, collect, use or disseminate;

(c) The term "record" means any item, collection or grouping of information about an individual that is maintained by the Committee, including but not limited to, his or her employment history, payroll information, and financial transactions and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as social security number;

(d) The term "system of records" means a group of any records under the control of the Committee from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

(e) The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 1410.3 Procedures for access of an individual to his or her own records in a record system.

An individual shall submit a request to the Administrative Assistant of the Committee, Suite 205, 1730 K Street NW., Washington, D.C. 20006, in person or in writing, to determine if a system of records named by the individual contains a record pertaining to the individual, or if the Committee maintains any systems of records which pertain to the individual. The individual shall submit a request to the Administrative Assistant of the Committee which states the individual's desire to review his or her record. Individuals who require assistance in identifying systems of record, or in preparing requests identifying systems of record for access, or who need assistance in requesting amendments, may address such requests to the Administrative Assistant of the Committee, Suite 205, 1730 K Street NW., Washington, D.C. 20006.

§ 1410.4 Times, places and requirements for the identification of the individual making a request.

An individual making a request to the Administrative Assistant of the Committee pursuant to § 1410.3 shall present the request at the Committee offices, Suite 205, 1730 K Street NW., Washington, D.C. 20006, on any business day between the hours of 8:15 a.m. and 4:45 p.m., or in writing. The individual submitting the request should present himself or herself at the Committee's offices with a form of identification which will permit the Committee to verify that the individual is the same individual as contained in the record requested, such as a valid driver's permit, employee identification card, or Medicare card, or a signed statement from the individual asserting his or her identity and stipulating that he or she understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is punishable by a fine of up to $5,000. If the individual seeks access by mail, the Committee will require similar identification as required of those persons requesting access to records in person, or by identifying data such as name, date of birth, or system personal identifier (if known to the individual). Requests for access to systems of record will be acknowledged within ten days of receipt. The acknowledgement will indicate whether or not access can be granted and, if so, that it will be within a 30-day period unless, for good cause shown, the Committee is unable to do so.

§ 1410.5 Grant to an individual of access to his or her own records.

Upon verification of identity either in person or in written form to the Administrative Assistant of the Committee, Suite 205, 1730 K Street NW., Washington, D.C. 20006, and in accordance with the identification provisions of § 1410.4, the Committee shall grant access to the individual the information contained in the record which pertains to that individual. The individual may be accompanied for the purpose by a person of his or her choosing. Upon request of the individual to whom the record pertains, all information in the accounting of disclosures will be made available. If, for any unforeseen circumstances, or in an unusual situation when it may be necessary to deny a person access, the individual will be advised of the reasons therefor, and his or her right to judicial review under 5 U.S.C. 552a(f)(4).

§ 1410.6 Access to the accounting of disclosures from records.

The Privacy Act requires that with some limited exceptions individuals may request access to a list of those to whom records about them have been disclosed. Individuals seeking access to the accounting of disclosures from records pertaining to them should follow the same procedures as established above for access to the records themselves (see §§ 1410.3, 1410.4, 1410.5).

§ 1410.7 Request for correction or amendment to the record.

The individual should submit a request to the Administrative Assistant of the Committee which states the individual's desire to correct or to amend his or her record. This request is to be made in accord with the provisions of § 1410.4.

§ 1410.8 Agency review of request for correction or amendment of the record.

Within ten working days of the receipt of the request to correct or to amend the record, the Administrative Assistant of the Committee will acknowledge in writing such receipt and promptly either—

(a) Make any correction or amendment or any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(b) Inform the individual of his or her refusal to correct or to amend the record in accordance with the request, the reason for the refusal, and the procedures established by the Committee for the individual to request a review of that refusal. Corrections or amendments will be sent to prior recipients of the record in question, to the extent that the Committee has an accounting of the disclosure of the record of that information.

§ 1410.9 Appeal of an initial adverse agency determination on correction or amendment of the record.

An individual who disagrees with the refusal of the Administrative Assistant of the Committee to correct or to amend his or her record may submit a request for a review of such refusal to the Chairman of the Advisory Committee on Federal Pay, Suite 205, 1730 K Street NW., Washington, D.C. 20006. The Chairman will, not later than thirty working days from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the Chairman extends such thirty day period. If, after his or her review, the Chairman also refuses to correct or to amend the record in accordance with the request, the individual may file with the Committee a concise statement setting forth the reasons for his or her disagreement with the refusal of the Committee and may seek judicial review of the Chairman's determination under 5 U.S.C. 552a(g)(1)(A). A copy of the corrected record or statement of dispute will be provided to prior recipients of the information in question, to the extent that the Committee has an accounting of the disclosure of that information.

§ 1410.10 Disclosure of record to a person other than the individual to whom the record pertains.

The Committee will not disclose a record to any individual other than to the individual to whom the record pertains without receiving the prior written consent of the individual to whom the record pertains, except as required or permitted under 5 U.S.C. 552a(b).

§ 1410.11 Fees.

If an individual requests copies of his or her record, he or she shall be charged ten cents per page for any copying charges in excess of $25. In cases of indigency, the Committee may waive such fees. In cases where copying charges exceed $25, advance payment will be required.

CHAPTER V—THE INTERNATIONAL ORGANIZATIONS EMPLOYEES LOYALTY BOARD

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PART 1501—OPERATIONS OF THE INTERNATIONAL ORGANIZATIONS EMPLOYEES LOYALTY BOARD

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AUTHORITY: E.O. 10422, as amended; 3 CFR, 1949-1953 Comp., p. 921.

SOURCE: 18 FR 6371, Oct. 7, 1953, unless otherwise noted.

§ 1501.1 Name.

This Board shall be known as the International Organizations Employees Loyalty Board, and any reference to the "Board" in this part shall mean such International Organizations Employees Loyalty Board.

§ 1501.2 Officers.

The officers of the Board shall consist of a chairman, a vice-chairman to be designated by the chairman, and an executive secretary to be appointed by the Board.

§ 1501.3 Duties of officers.

(a) *The Chairman.* The chairman shall perform all the duties usually pertaining to the office of chairman, including presiding at Board meetings, supervising the administrative work of the Board, and conducting its correspondence. He shall be authorized to call special meetings of the Board, when in his judgment, such meetings are necessary and shall call such meetings at the written request of three members of the Board. The time and place of such meetings shall be fixed by the chairman. The chairman shall constitute such panels of the Board as may be necessary or desirable to render advisory determinations and to conduct hearings, and he is authorized to appoint such committees as from time to time may be required to handle the work of the Board. The chairman may request the vice-chairman to assume the duties of the chairman in the event of the absence of the chairman or his inability to act.

(b) *The Vice-Chairman.* The duties of the vice-chairman, when acting in the place of the chairman, shall be the same as the duties of the chairman.

(c) *The Executive-Secretary.* The executive-secretary shall perform all of the duties customarily performed by an executive-secretary. He shall have immediate charge of the administrative duties of the Board under the direction of the chairman and shall have general responsibility for advising and assisting the Board members and exercising executive direction over the staff.

§ 1501.4 Hearings.

No adverse determination shall be made without the opportunity for a hearing.

§ 1501.5 Panels of the Board.

All hearings shall be held by panels of the Board, the determinations of which shall be the determinations of the Board. Such panels of the Board shall consist of not less than three members designated by the chairman. The chairman shall designate the Board member who shall be the presiding member and it shall be the duty of such presiding member to make due report to the Board of all acts and proceedings of the said panel.

§ 1501.6 Quorum.

A majority of all the members of the Board shall constitute a quorum of the Board. Minutes shall be kept of the transactions of the Board in its meetings.

§ 1501.7 Authority and responsibility of the Board.

The Board shall have the authority and responsibility to make rules and regulations, not inconsistent with the provisions of Executive Order 10422, as amended, for the execution of its functions and for making available to the Secretary General of the United Nations and the executive heads of other public international organizations certain information concerning United States citizens employed or being considered for employment by the United Nations or other public international organizations of which the United States is a member.

§ 1501.8 Grounds for determinations of the Board.

(a) *Standard.* The standard to be used by the Board in making any advisory determination relating to the loyalty of a United States citizen who is an employee of, or is being considered for employment in, a public international organization of which the United States is a member, shall be whether or not on all the evidence there is a reasonable doubt as to the loyalty of the person involved to the Government of the United States.

(b) *Activities and associations.* Among the activities and associations of the employee or person being considered for employment which may be considered in connection with a determination of disloyalty may be one or more of the following:

(1) Sabotage, espionage, or attempts or preparations therefor, or knowingly associating with spies or saboteurs.

(2) Treason or sedition or advocacy thereof.

(3) Advocacy of revolution or force or violence to alter the constitutional form of government of the United States.

(4) Intentional, unauthorized disclosure to any person, under circumstances which may indicate disloyalty to the United States, of United States documents or United States information of a confidential or non-public character obtained by the person making the disclosure as a result of his previous employment by the Government of the United States or otherwise.

(5) Performing or attempting to perform his duties, or otherwise acting, while an employee of the United States Government during a previous period, so as to serve the interests of another government in preference to the interests of the United States.

(6) Membership in, or affiliation or sympathetic association with, any foreign or domestic organization, association, movement, or group or combination of persons, designated by the Attorney General as totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

§ 1501.9 Cases reviewable by the Board.

All cases in which an investigation has been made under Executive Order 10422, as amended, shall be referred to and reviewed by the Board in accordance with the Executive Order and the rules and regulations of the Board.

§ 1501.10 Consideration of reports of investigation.

(a) In all cases the Board shall consider the reports of investigation in the light of the standard as set forth in § 1501.8 and shall determine whether such reports warrant a finding favorable to the individual or appear to call for further processing of the case with a view to a possible unfavorable determination.

(b) If the Board reaches a favorable conclusion in a case involving a question of loyalty, it shall make a determination that on all the evidence there is not a reasonable doubt as to the individual's loyalty.

(c) If the Board determines that the reports do not warrant a finding favorable to the individual, or the Board determines that the evidence is of such a nature that a hearing may be required before a final decision is made, the Board shall send by registered mail, or in such other manner as the Board in a particular case may decide, a written interrogatory to the individual. Such interrogatory shall state the nature of the evidence against him, setting forth with particularity the facts and circumstances involved, in as much detail as security conditions permit, in order to enable him to submit his answer, defense or explanation and to submit affidavits. It will also inform the applicant or employee, of his opportunity to reply to the interrogatory in writing, under oath or affirmation, within ten (10) calendar days of the date of receipt by him of the interrogatory or such longer time as the Board in specific cases may prescribe, and of his opportunity for a hearing on the issues before the Board or a panel of the Board, including his right to appear personally at such hearing, to be represented by counsel of a representative of his own choosing, to present evidence in his own behalf, and to cross-examine witnesses offered in support of the derogatory information.

§ 1501.11 Consideration of complete file before hearing.

(a) Following delivery to the applicant or employee of the interrogatory and after expiration of the time limit for filing an answer to the interrogatory, the Board shall proceed to consider the case on the complete file, including the answer, if any, to the interrogatory.

(b) If, upon such consideration, the Board concludes that a finding favorable to the individual may be made, no hearing shall be required.

(c) If, upon such consideration, the Board concludes that a determination favorable to the individual cannot be made on the basis of the information in the file, it shall set a time and place for a hearing and shall give notice thereof to the individual.

§ 1501.12 Obtaining further information.

At any stage in its review and consideration of a case, if the Board deems it advisable or necessary to obtain information or clarification of any matter, the Board may request further investigation, or submit a written questionnaire to the individual whose case is before the Board, or request such individual to furnish information in an oral interview.

§ 1501.13 Conduct of hearings.

(a) Not less than three members of a panel of the Board shall be present at all hearings. The Board shall conduct its hearings in such manner as to protect from disclosure information affecting the national security. The chairman of the panel shall preside and be responsible for the maintenance of decorum and order in the hearing.

(b) Attendance at hearings shall be limited to the applicant or employee, his attorney or representative, the panel of the Board assigned to the case, Board members, Board staff employees participating in the case, the witness who is testifying, and such other persons as in the opinion of the panel are required for the proper presentation of the case. Representation for an applicant or employee shall be limited to one attorney or representative and one bona fide assistant, both representing the applicant or employee only.

(c) Hearings shall begin with the reading of the interrogatory. The applicant or employee shall thereupon be informed of his right to participate in the hearing, to be represented by counsel, to present witnesses and other evidence in his behalf, and to cross-examine witnesses offered in support of the derogatory information.

(d) Testimony shall be given under oath or affirmation.

(e) Strict legal rules of evidence shall not be applied at the hearings, but reasonable bounds shall be maintained as to competency, relevancy, and materiality and due allowance shall be made for the effect of any nondisclosure to the individual of information or the absence of any opportunity to cross-examine persons who supplied information but who do not appear and testify. Both the Government and the applicant or employee may introduce such evidence as the panel may deem proper in the particular case.

(f) A complete verbatim stenographic transcript shall be made of the hearing, and the transcript shall constitute a permanent part of the record.

(g) Applicants and employees must pay their own travel and subsistence expenses incident to attendance at hearings, except that the Board may authorize the payment of travel and subsistence expenses to applicants or employees when the hearing is held at a place other than the place outside the continental limits of the United States where the employee works, or the applicant resides, and such payment is considered in the interest of good administration and funds are available for this purpose.

[18 FR 6371, Oct. 7, 1953, as amended at 21 FR 5249, July 14, 1956]

§ 1501.14 Decision of the Board.

After the employee or person being considered for employment has been given a hearing, the Board shall promptly make its decision. The determination of the Board shall be in writing and shall be signed by the members of the panel. It shall state the action taken, together with the reasons therefor, and shall be made a permanent part of the file in every case.

§ 1501.15 Transmission of Determination to the Secretary of State.

The Board shall transmit its determination in each case to the Secretary of State for transmission to the Secretary General of the United Nations, or the executive head of any other public international organization concerned. In each case in which the Board determines that, on all the evidence, there is a reasonable doubt as to the loyalty of the person involved to the Government of the United States, it shall also transmit a statement of the reasons for the Board's determination in as much detail as the Board deems that security considerations permit.

§ 1501.16 Notification of individual concerned.

A copy of the determination of the Board, but not of the statement of reasons, shall be furnished in each case to the person who is the subject thereof.

(a) Applicants and employees
t their own travel and subsistence
xpenses. Hearings in exceptional cir-
umstances, when the Board may
uthorize payment of travel and
ubsistence expenses to applicants or
mployees when the hearing is held at
 place other than the place within
he continental limits of the United
tates where the employee works or
he applicant resides, and such pay-
ent is considered in the interest of
ood administration and funds are
vailable for the purpose.

8 F.R. 8271, Dec. 1, 1953, as amended at 21
. 2711, Apr. 26, 1956]

1501.14 Decision of the Board.

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sons therefor, and shall be made a permanent part of the file in each case.

§ 1501.15 Transmission of determination to Secretary of State.

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§ 1501.16 Notification of individual concerned.

A copy of the determination of the Board, but not of the statement of reasons, shall be furnished immediately to the person who is the subject thereof.

CHAPTER VII—ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

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PART 1700—EMPLOYEE RESPONSIBILITIES AND CONDUCT

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1700.735-104 Gifts, entertainment, and favors.
1700.735-105 Outside employment.
1700.735-108 Specific provisions of Commission regulations governing special Government employees.
1700.735-109 Statements of employment and financial interest.

AUTHORITY: E.O. 11222, 3 CFR, 1964-1965 Comp., p. 306; 5 CFR 735.101, et seq.

SOURCE: 33 FR 4615, Mar. 16, 1968, unless otherwise noted.

§ 1700.735-101 Adoption of regulations.

Pursuant to § 735.104(f) of this title, the Advisory Commission on Intergovernmental Relations (referred to hereinafter as the Commission) hereby adopts the following sections of Part 735 of this title, Code of Federal Regulations: §§ 735.101, 735.102, 735.201a, 735.202(a), (d), (e), (f)-735.210, 735.302, 735.303(a), 735.304, 735.305(a), 735.403(a), 735.404-735.411, 735.412 (b) and (d). These adopted sections are modified and supplemented as set forth in this part.

§ 1700.735-102 Review of statements of employment and financial interests.

Each statement of employment and financial interests submitted under this part shall be reviewed by the Executive Director. When this review indicates a conflict of interest of an employee or special Government employee of the Commission and the performance of his services for the Government, the Executive Director shall have the indicated conflict brought to the attention of the employee or special Government employee, grant the employee or special Government employee an opportunity to explain the indicated conflict, and attempt to resolve the indicated conflict. If the indicated conflict cannot be resolved, the Executive Director shall forward a written report on the indicated conflict to the Chairman, Advisory Commission on Intergovernmental Relations.

§ 1700.735-103 Disciplinary and other remedial action.

An employee or special Government employee of the Commission who violates any of the regulations in this part or adopted under § 1700.735-101 may be disciplined. The disciplinary action may be in addition to any penalty prescribed by law for the violation. In addition to, or in lieu of, disciplinary action, remedial action to end conflicts or appearance of conflicts of interest may include but is not limited to:

(a) Changes in assigned duties;

(b) Divestment by the employee of his conflicting interests; or

(c) Disqualification for a particular assignment.

§ 1700.735-104 Gifts, entertainment, and favors.

The Commission authorizes the exceptions to § 735.202(a) of this title set forth in § 735.202(b) (1)-(4) of this title.

§ 1700.735-105 Outside employment.

(a) An employee of the Commission may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of his Government employment. An employee who engages in outside employment shall report that fact in writing to his supervisor.

(b) Employees and special Government employees of the Commission may engage in teaching, writing, and lecturing, provided, however, employees and special Government employees shall not receive compensation or anything of monetary value for any consultation, discussion, writing, lecturing, or appearance the subject matter of which is devoted substantially to the specific responsibilities, programs, or operations of the Commission, or which draws substantially on official data or ideas which have not been published or otherwise publicly released by the Commission. The foregoing limitation on the receipt of compensation or anything of monetary value shall not be construed as applying to amounts received for reimbursement for travel and other expenses incurred in performing the outside employment.

§ 1700.735-108 Specific provisions of Commission regulations governing special Government employees.

(a) The term "special Government employee" as used in this part means an officer or employee who is retained, designated, appointed, or employed by the Commission to perform, with or without compensation, for not more than 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis.

(b) Special Government employees shall adhere to the standards of conduct applicable to employees set forth in this part and adopted under § 1700.735-101, except that § 735.203(b) of this title is not applicable to a special Government employee.

(c) Pursuant to § 735.305(b) of this title, the Commission authorizes the same exceptions concerning gifts, entertainment, and favors for special Government employees as are authorized for employees by § 1700.735-104.

§ 1700.735-109 Statements of employment and financial interests.

(a) In addition to the employees required to submit statements of employment and financial interests under § 735.403(a) of this title, employees in the following named positions shall submit statements of employment and financial interest to the Executive Director:

Assistant Director, Taxation and Finance.

Assistant Director, Governmental Structure and Functions.

Assistant Director, Program Implementation.

(b) The statement of employment and financial interest required by this section shall be submitted by the Executive Director to the Chairman of the Commission.

(c) An employee who believes that his position has been improperly included in this section as one requiring the submission of a statement of employment and financial interests may obtain a review of his complaint under the agency's grievance procedure.

(d) A statement of employment and financial interest is not required under this part from Members of the Commission. Members of the Commission are subject to 3 CFR 100.735-31 and are required to file a statement only if requested to do so by the Counsel to the President.

NOTE: Notwithstanding the filing of the annual supplementary statement required by 5 CFR 735.406, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of title 18, United States Code or the regulations in this part or adopted under § 735.101.

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1900.735-103 Disciplinary and other remedial action.
1900.735-104 Gifts, entertainment, and favors.
1900.735-105 Outside employment and other activity.
1900.735-106 Specific provisions governing special Government employees.
1900.735-107 Statements of employment and financial interest.
1900.735-108 Supplementary statements.

AUTHORITY: E.O. 11222, 3 CFR, 1964-1965 Comp., p. 306; 5 CFR 735.101-735.104.

SOURCE: 31 FR 5189, Mar. 31, 1966, unless otherwise noted.

§ 1900.735-101 Adoption of regulations.

Pursuant to 5 CFR 735.104(f), the Federal Cochairman of the Appalachian Regional Commission (referred to hereinafter as the Federal Cochairman) hereby adopts the following sections of Part 735 of Title 5, Code of Federal Regulations: §§ 735.101-735.102; 735.201a; 735.202 (a), (d), (e), (f)-735.210; 735.302; 735.303(a); 735.304; 735.305(a); 735.306; 735.403(a); 735.404-735.411; 735.412 (b) and (d) for the Federal employees and any special Government employee on the Federal Cochairman's staff (Federal staff). These adopted sections are modified and supplemented as set forth in this part.

[33 FR 3369, Feb. 27, 1968]

§ 1900.735-102 Review of statements of employment and financial interests.

Each statement of employment and financial interests submitted under this part shall be reviewed by the Federal Cochairman. When this review indicates a conflict between the interests of an employee or a special Government employee on the Federal staff and the performance of his services for the Government, the Federal Cochairman shall have the indicated conflict brought to the attention of the employee or special Government employee, grant the employee or special Government employee an opportunity to explain the indicated conflict, and attempt to resolve it.

[31 FR 5189, Mar. 31, 1966; 31 FR 5481, Apr. 7, 1966]

§ 1900.735-103 Disciplinary and other remedial action.

An employee or special Government employee on the Federal Staff who violates any of the regulations in this part or adopted under § 1900.735-101 may be disciplined. The disciplinary action may be in addition to any penalty prescribed by law for the violation. In addition to or in lieu of disciplinary action, remedial action to end conflicts or appearance of conflicts of interest may include but is not limited to:

(a) Changes in assigned duties;

(b) Divestment by the employee or special Government employee of his conflicting interest; or

(c) Disqualification for a particular assignment.

§ 1900.735-104 Gifts, entertainment, and favors.

The exceptions to § 735.202(a) of this title set forth in § 735.202(b) (1)-(4) of the title are authorized for the Federal Staff.

§ 1900.735-105 Outside employment and other activity.

An employee of the Federal Staff may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of his Government employment. An employee who engages in outside employment shall report that fact in writing to the Federal Cochairman.

§ 1900.735-106 Specific provisions governing special Government employees.

(a) Special Government employees who may be employed on the Federal Staff shall adhere to the standards of conduct applicable to employees as set forth in this part and adopted under § 1900.735-101 except § 735.203(b) of this title.

(b) Special Government employees on the Federal Staff may teach, lecture, or write in a manner not inconsistent with § 735.203(c) of this title.

(c) Pursuant to § 735.305(b) of this title, the same exceptions concerning gifts, entertainment, and favors are authorized for special Government employees as are authorized for employees by § 1900.735-104.

§ 1900.735-107 Statements of employment and financial interest.

(a) In addition to the employees required to submit statements of employment and financial interest under 5 CFR 735.403(a), employees in the following named positions shall submit statements of employment and financial interest:

(1) The Alternate to the Federal Cochairman.

(2) Special Assistant to the Federal Cochairman.

(3) Program Coordinator.

(b) Each statement of employment and financial interest required by this section shall be submitted to the Federal Cochairman.

(c) An employee who believes that his position has been improperly included in the section as one requiring the submission of a statement of employment and financial interests may obtain a review of his complaint under the procedures in § 1900.735-102.

[33 FR 3369, Feb. 27, 1968]

§ 1900.735-108 Supplementary statements.

Notwithstanding the filing of the annual supplementary statement required by 5 CFR 735.406, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of title 18, United States Code or the regulations in this part or adopted under § 1900.735-101.

[33 FR 3369, Feb. 27, 1968]

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2100.735-103 Disciplinary and other remedial action.
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2100.735-105 Outside employment and other activity.
2100.735-106 Specific provisions of agency regulations governing special Government employees.
2100.735-107 Statements of employment and financial interest.
2100.735-108 Supplementary statements.

AUTHORITY: E.O. 11222, 3 CFR, 1964-1965 Comp., p. 306; 5 CFR 735.104.

SOURCE: 33 FR 485, Jan. 13, 1968, unless otherwise noted.

§ 2100.735-101 Adoption of regulations.

Pursuant to 5 CFR 735.104(f), the U.S. Soldiers' and Airmen's Home (referred to hereinafter as the agency) hereby adopts the following sections of Part 735 of Title 5, Code of Federal Regulations: §§ 735.101-735.102, 735.201a, 735.202 (a), (d), (e) (f)-735.210, 735.302, 735.303(a), 735.304, 735.305(a), 735.306, 735.401, 735.403(a), 735.404(b), 735.405, 735.407-735.411, 735.412 (b)-(d). These adopted sections are modified and supplemented as set forth in this part.

NOTE: Paragraphs (c) and (d) of § 735.203 of Part 735 of Title 5, Code of Federal Regulations, previously adopted by § 2100.735-101, were amended in the Civil Service Regulations, and these amendments are now adopted in the agency regulations and read, 33 FR 11535, August 14, 1968:

(c) Employees are encouraged to engage in teaching, lecturing and writing that is not prohibited by law, the Executive order, this part, or the agency regulations. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Commission or Board of Examiners for the Foreign Service, that depends on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the agency head gives written authorization for use of nonpublic information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of the order shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of his agency, or which draws substantially on official data or ideas which have not become part of the body of public information.

(d) [Deleted]

§ 2100.735-102 Review of statements of employment and financial interests.

Each statement of employment and financial interests submitted under this part shall be reviewed by the Governor. When this review indicates a conflict between the interests of an employee or special Government employee of the agency and the performance of his services for the Government, the Governor shall have the indicated conflict brought to the attention of the employee or special Government employee, grant the employee or special Government employee an opportunity to explain the indicated conflict, and resolve the indicated conflict with due consideration of the recommendation of the counselor for the agency designated under § 735.105(a) of this title.

§ 2100.735-103 Disciplinary and other remedial action.

An employee or special Government employee of the agency who violates any of the regulations in this part or adopted under § 2100.735-101 may be disciplined. The disciplinary action may be in addition to any penalty prescribed by law for the violation. In addition to or in lieu of disciplinary action, remedial action to end conflicts or appearance of conflicts of interest may include but is not limited to:

(a) Changes in assigned duties;

(b) Divestment by the employee or special Government employee of his conflicting interest; or

(c) Disqualification for a particular assignment.

§ 2100.735-104 Gifts, entertainment, and favors.

The agency authorizes the exceptions to § 735.202(a) of this title set forth in § 735.202(b) (1)-(4) of this title.

§ 2100.735-105 Outside employment and other activity.

An employee of the agency may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of his Government employment.

§ 2100.735-106 Specific provisions of agency regulations governing special Government employees.

(a) Special Government employees of the agency shall adhere to the standards of conduct applicable to employees as set forth in this part and adopted under § 2100.735-101, except § 735.203(b) of this title.

(b) Special Government employees of the agency may teach, lecture, or write in a manner not inconsistent with § 735.203(c) of this title.

(c) Pursuant to § 735.305(b) of this title, the agency authorizes the same exceptions concerning gifts, entertainment, and favors for special Government employees as are authorized for employees by § 2100.735-104.

§ 2100.735-107 Statements of employment and financial interest.

(a) In addition to the employees required to submit statements of employment and financial interest under § 735.403(a) of this title, employees in the following named positions shall submit statements of employment and financial interest: Quartermaster, Engineer, and Purchasing Officer.

(b) Each statement of employment and financial interest required by this section shall be submitted to the Governor, U.S. Soldiers' and Airmen's Home.

(c) An employee who believes that his position has been improperly included in this section as one requiring the submission of a statement of employment and financial interests may obtain a review of his complaint under the agency's grievance procedure.

§ 2100.735-108 Supplementary statements.

Notwithstanding the filing of the annual supplementary statement required by § 735.406 of this title, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of title 18, United States Code or the regulations in this part or adopted under § 2100.735-101.

CHAPTER XIV—FEDERAL LABOR RELATIONS AUTHORITY, GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY AND FEDERAL SERVICE IMPASSES PANEL

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SUBCHAPTER A—TRANSITION RULES AND REGULATIONS

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AUTHORITY: Reorganization Plan No. 2 of 1978, 43 FR 36037; 5 U.S.C. 3301, 7301; E.O. 11491, 34 FR 17605, 3 CFR 1966-1970 Comp., p. 861; as amended by E.O. 11616, 36 FR 17319, 3 CFR, 1971-1975 Comp., p. 605; E.O. 11636, 36 FR 24901, 3 CFR, 1971-1975 Comp., p. 634; E.O. 11838, 40 FR 5743 and 7391, 3 CFR, 1971-1975 Comp., p. 957; E.O. 11901, 41 FR 4807, 3 CFR, 1976 Comp., p. 87; E.O. 12027, 42 FR 61851, 3 CFR, 1977 Comp., p. 159; and E.O. 12107, 44 FR 1055.

SOURCE: 45 FR 3487, Jan. 17, 1980, unless otherwise noted.

§ 2400.1 Scope and purpose.

This subchapter contains transition rules and regulations issued pursuant to section 307 of Reorganization Plan No. 2 of 1978, and sections 4(b) and 5(c) of Executive Order 11491, as amended, to govern the processing of all cases which were pending on December 31, 1978, before the Federal Labor Relations Council (Council), the Assistant Secretary of Labor for Labor-Management Relations (Assistant Secretary), the Vice Chairman of the Civil Service Commission (Vice Chairman) when performing the duties of the Assistant Secretary, and the Federal Service Impasses Panel (Panel); and to govern the processing of all cases filed with the Authority and the Panel during the period January 1 through January 10, 1979.

§ 2400.2 Processing of unfair labor practice, representation, grievability/arbitrability and national consultation rights cases.

All unfair labor practice, representation, grievability/arbitrability and national consultation rights cases pending before the Assistant Secretary and the Vice Chairman on December 31, 1978 (including cases the time limit for which an appeal to the Council has not expired under the Council's rules and regulations), all such cases pending before the Council on December 31, 1978, and all such cases filed with the Authority during the period January 1 through January 10, 1979, shall be processed by the Authority in accordance with the Rules and Regulations of the Office of the Assistant Secretary for Labor-Management Relations, Title 29, Code of Federal Regulations, Part 201 *et seq.* (Revised as of July 1, 1978) and the Rules and Regulations of the Federal Labor Relations Council, Title 5, Code of Federal Regulations, Part 2411 *et seq.* (Revised as of January 1, 1978); *except* that, as appropriate:

(a) The word "Authority" shall be substituted wherever the word "Council" appears in such rules and regulations;

(b) The word "Authority" shall be substituted wherever the words "Assistant Secretary" or "Vice Chairman" appear in the rules and regulations of the Office of the Assistant Secretary, except in Part 204 of such rules;

(c) Wherever the rules and regulations of the Office of the Assistant Secretary require action to be taken by subordinate personnel of the Assistant Secretary, such action shall be taken by equivalent subordinate personnel of the Authority;

(d) Wherever the rules and regulations of the Council provide for the service of copies of documents on the Assistant Secretary, or provide a right of the Assistant Secretary to intervene in Council proceedings, such provisions shall be deemed inoperative; and

(e) The decision of the Authority when rendered in any case shall be final and not subject to further appeal within the Authority.

§ 2400.3 Processing of standards of conduct cases.

All standards of conduct cases pending before the Assistant Secretary on December 31, 1978 (including cases the time limit for which an appeal to the Council has not expired under the Council's rules and regulations), and all such cases filed with the Assistant Secretary during the period January 1 through January 10, 1979, may be appealed to the Authority under the Rules and Regulations of the Federal Labor Relations Council, Title 5, Code of Federal Regulations, Part 2411 *et seq.* (Revised as of January 1, 1978), except that the word "Authority" shall be substituted, as appropriate, wherever the word "Council" appears in such rules. All standards of conduct cases pending before the Council on December 31, 1978, shall be processed by the Authority in the same manner as Assistant Secretary cases pending before the Council on that date under § 2400.2.

§ 2400.4 Processing of negotiability cases.

All negotiability cases pending before the Council on December 31, 1978, and all negotiability cases filed with the Authority during the period of January 1 through January 10, 1979, shall be processed by the Authority in accordance with the Rules and Regulations of the Federal Labor Relations Council, Title 5, Code of Federal Regulations, Part 2411 *et seq.* (Revised as of January 1, 1978), except that the word "Authority" shall be substituted, as appropriate, wherever the word "Council" appears in such rules.

§ 2400.5 Processing of arbitration cases.

All arbitration cases pending before the Council on December 31, 1978, and all arbitration cases filed with the Authority during the period January 1 through January 10, 1979, shall be processed by the Authority in accordance with the Rules and Regulations of the Federal Labor Relations Council, Title 5, Code of Federal Regulations, Part 2411 *et seq.* (Revised as of January 1, 1978), except that the word "Authority" shall be substituted, as appropriate, wherever the word "Council" appears in such rules.

§ 2400.6 Processing of Panel cases.

All cases pending before the Panel on December 31, 1978, and all cases filed with the Panel during the period of January 1 through January 10, 1979, shall be processed by the Panel in accordance with the Rules and Regulations of the Federal Service Impasses Panel, Title 5, Code of Federal Regulations, Part 2470 *et seq.* (Revised as of January 1, 1978), except that the word "Authority" shall be substituted, as appropriate, wherever the word "Council" appears in such rules.

SUBCHAPTER B—GENERAL PROVISIONS

PART 2411—AVAILABILITY OF OFFICIAL INFORMATION

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AUTHORITY: 5 U.S.C. 552.

SOURCE: 45 FR 3488, Jan. 17, 1980, unless otherwise noted.

§ 2411.1 Purpose and scope.

This part contains the regulations of the Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority and the Federal Service Impasses Panel providing for public access to information from the Authority, the General Counsel or the Panel. These regulations implement the Freedom of Information Act, as amended, 5 U.S.C. 552, and the policy of the Authority, the General Counsel and the Panel to disseminate information on matters of interest to the public and to disclose to members of the public on request such information contained in records insofar as is compatible with the discharge of their responsibilities, consistent with applicable law.

§ 2411.2 Delegation of authority.

(a) *Federal Labor Relations Authority/General Counsel of the Federal Labor Relations Authority.* Regional Directors of the Federal Labor Relations Authority, the Freedom of Information Officer of the Office of the General Counsel, Washington, D.C., and the Solicitor of the Federal Labor Relations Authority are delegated the exclusive authority to act upon all requests for information, documents and records which are received from any person or organization under § 2411.4(a).

(b) *Federal Service Impasses Panel.* The Executive Director of the Federal Service Impasses Panel is delegated the exclusive authority to act upon all requests for information, documents and records which are received from any person or organization under § 2411.4(b).

§ 2411.3 Information policy.

(a) *Federal Labor Relations Authority/General Counsel of the Federal Labor Relations Authority.* (1) It is the policy of the Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority to make available for public inspection and copying: (i) Final decisions and orders of the Authority and administrative rulings of the General Counsel; (ii) statements of policy and interpretations which have been adopted by the Authority or by the General Counsel and are not published in the FEDERAL REGISTER; and (iii) administrative staff manuals and instructions to staff that affect a member of the public (except those establishing internal operating rules, guidelines, and procedures for the investigation, trial, and settlement of cases). Any person may examine and copy items (i) through (iii) at each regional office of the Authority and at the offices of the Authority and the General Counsel, respectively, in Washington, D.C., under conditions prescribed by the Authority and the General Counsel, respectively, and at reasonable times during normal working hours so long as it does not interfere with the efficient operations of the Authority and the General Counsel. To the extent required to prevent a clearly unwarranted invasion of personal privacy, identifying details may be deleted and, in each case, the justification for the deletion shall be fully explained in writing.

(2) It is the policy of the Authority and the General Counsel to make promptly available for public inspection and copying, upon request by any person, other records where the re-

quest reasonably describes such records and otherwise conforms with the rules provided herein.

(b) *Federal Service Impasses Panel.* (1) It is the policy of the Federal Service Impasses Panel to make available for public inspection and copying: (i) Procedural determinations of the Panel; (ii) factfinding and arbitration reports; (iii) final decisions and orders of the Panel; (iv) statements of policy and interpretations which have been adopted by the Panel and are not published in the FEDERAL REGISTER; and (v) administrative staff manuals and instructions to staff that affect a member of the public. Any person may examine and copy items (i) through (v) at the Panel's offices in Washington, D.C., under conditions prescribed by the Panel, and at reasonable times during normal working hours so long as it does not interfere with the efficient operations of the Panel. To the extent required to prevent a clearly unwarranted invasion of personal privacy, identifying details may be deleted and, in each case, the justification for the deletion shall be fully explained in writing.

(2) It is the policy of the Panel to make promptly available for public inspection and copying, upon request by any person, other records where the request reasonably describes such records and otherwise conforms with the rules provided herein.

(c) The Authority, the General Counsel and the Panel shall maintain and make available for public inspection and copying the current indexes and supplements thereto which are required by 5 U.S.C. 552(a)(2) and, as appropriate, a record of the final votes of each member of the Authority and of the Panel in every agency proceeding. Any person may examine and copy such document or record of the Authority, the General Counsel or the Panel at the offices of either the Authority, the General Counsel, or the Panel, as appropriate, in Washington, D.C., under conditions prescribed by the Authority, the General Counsel or the Panel at reasonable times during normal working hours so long as it does not interfere with the efficient operations of either the Authority, the General Counsel, or the Panel.

(d) The Authority, the General Counsel or the Panel may decline to disclose any matters exempted from the disclosure requirements in 5 U.S.C. 552(b), particularly those that are:

(1) (i) Specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and (ii) are in fact properly classified pursuant to such executive order;

(2) Related solely to internal personnel rules and practices of the Authority, the General Counsel or the Panel;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:

(i) Interfere with an enforcement proceeding;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel.

(e) (1) The formal documents constituting the record in a case or proceeding are matters of official record and, until destroyed pursuant to applicable statutory authority, are available to the public for inspection and copying at the appropriate regional office of the Authority, or the offices of the Authority, the General Counsel or the Panel in Washington, D.C., as appropriate, under conditions prescribed by the Authority, the General Counsel or the Panel at reasonable times during normal working hours so long as it does not interfere with the efficient operations of the Authority, the General Counsel or the Panel.

(2) The Authority, the General Counsel or the Panel, as appropriate, shall certify copies of the formal documents upon request made a reasonable time in advance of need and payment of lawfully prescribed costs.

(f) (1) Copies of forms prescribed by the Authority for the filing of charges and petitions may be obtained without charge from any regional office of the Authority.

(2) Copies of forms prescribed by the Panel for the filing of requests may be obtained without charge from the Panel's offices in Washington, D.C.

§ 2411.4 Procedure for obtaining information.

(a) *Federal Labor Relations Authority/General Counsel of the Federal Labor Relations Authority.* Any person who desires to inspect or copy any records, documents or other information of the Authority or the General Counsel, covered by this part, other than those specified in paragraphs (a)(1) and (c) of § 2411.3, shall submit a written request to that effect as follows:

(1) If the request is for records, documents or other information in a regional office of the Authority, it should be made to the appropriate Regional Director;

(2) If the request is for records, documents or other information in the Office of the General Counsel and located in Washington, D.C., it should be made to the Freedom of Information Officer, Office of the General Counsel, Washington, D.C.; and

(3) If the request is for records, documents or other information in the offices of the Authority in Washington, D.C., it should be made to the Solicitor of the Authority, Washington, D.C.

(b) *Federal Service Impasses Panel.* Any person who desires to inspect or copy any records, documents or other information of the Panel covered by this part, other than those specified in paragraphs (b) (1) and (c) of § 2411.3, shall submit a written request to that effect to the Executive Director, Federal Service Impasses Panel, Washington, D.C.

(c) All requests under this part should be clearly and prominently identified as a request for information under the Freedom of Information Act and, if submitted by mail or otherwise submitted in an envelope or other cover, should be clearly identified as such on the envelope or other cover. If a request does not comply with the provisions of this paragraph, it shall not be deemed received by the appropriate Regional Director, the Freedom of Information Officer of the Office of the General Counsel, the Solicitor of the Authority, or the Executive Director of the Panel, as appropriate, until the time it is actually received by such person.

§ 2411.5 Identification of information requested.

(a) Each request under this part should reasonably describe the records being sought in a way that they can be identified and located. A request should include all pertinent details that will help identify the records sought.

(b) If the description is insufficient, the officer processing the request will so notify the person making the request and indicate the additional information needed. Every reasonable effort shall be made to assist in the identification and location of the record sought.

(c) Upon receipt of a request for records, the appropriate Regional Director, the Freedom of Information Officer of the Office of the General Counsel, the Solicitor of the Authority, or the Executive Director of the

Panel, as appropriate, shall enter it in a public log. The log shall state the date and time received, the name and address of the person making the request, the nature of the records requested, the action taken on the request, the date of the determination letter sent pursuant to paragraphs (b) and (c) of § 2411.6, the date(s) any records are subsequently furnished, the number of staff-hours and grade levels of persons who spent time responding to the request, and the payment requested and received.

§ 2411.6 Time limits for processing requests.

(a) All time limits established pursuant to this section shall begin as of the time at which a request for records is logged in by the appropriate Regional Director, the Freedom of Information Officer of the Office of the General Counsel, the Solicitor of the Authority, or the Executive Director of the Panel, as appropriate, processing the request pursuant to paragraph (c) of § 2411.5. An oral request for records shall not begin any time requirement. A written request for records sent to other than the appropriate officer will be forwarded to that officer by the receiving officer, but in that event the applicable time limit for response set forth in paragraph (b) of this section shall begin upon the request being logged in as required by paragraph (c) of § 2411.5.

(b) Except as provided in § 2411.8, the appropriate Regional Director, the Freedom of Information Officer of the Office of the General Counsel, the Solicitor of the Authority, or the Executive Director of the Panel, as appropriate, shall, within ten (10) working days following receipt of the request, respond in writing to the requester, determining whether, or the extent to which, the request shall be complied with.

(1) If all the records requested have been located and a final determination has been made with respect to disclosure of all of the records requested, the response shall so state.

(2) If all of the records have not been located or a final determination has not been made with respect to disclosure of all the records requested, the response shall state the extent to which the records involved shall be disclosed pursuant to the rules established in this part.

(3) If the request is expected to involve an assessed fee in excess of $25.00, the response shall specify or estimate the fee involved and shall require prepayment of any charges in accordance with the provisions of paragraph (a) of § 2411.10 before the records are made available.

(4) Whenever possible, the response relating to a request for records that involves a fee of less than $25.00 shall be accompanied by the requested records. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Authority, the General Counsel or the Panel.

(c) If any request for records is denied in whole or in part, the response required by paragraph (b) of this section shall notify the requester of the denial. Such denial shall specify the reason therefor, set forth the name and title or position of the person responsible for the denial, and notify the person making the request of the right to appeal the denial under the provisions of § 2411.7.

§ 2411.7 Appeal from denial of request.

(a) *Federal Labor Relations Authority/General Counsel of the Federal Labor Relations Authority.* (1) Whenever any request for records is denied, a written appeal may be filed within thirty (30) days after the requester receives notification that the request has been denied or after the requester receives any records being made available, in the event of partial denial. If the denial was made by a Regional Director or by the Freedom of Information Officer of the Office of the General Counsel, the appeal shall be filed with the General Counsel in Washington, D.C. If the denial was made by the Solicitor of the Authority, the appeal shall be filed with the Chairman of the Authority in Washington, D.C.

(2) The Chairman of the Authority or the General Counsel, as appropriate, shall, within twenty (20) working days from the time of receipt of the

appeal, except as provided in § 2411.8, make a determination on the appeal and respond in writing to the requester, determining whether, or the extent to which, the request shall be complied with.

(i) If the determination is to comply with the request and the request is expected to involve an assessed fee in excess of $25.00, the determination shall specify or estimate the fee involved and shall require prepayment of any charges due in accordance with the provisions of paragraph (a) of § 2411.10 before the records are made available.

(ii) Whenever possible, the determination relating to a request for records that involves a fee of less than $25.00 shall be accompanied by the requested records. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Authority or the General Counsel.

(b) *Federal Service Impasses Panel.* (1) Whenever any request for records is denied by the Executive Director, a written appeal may be filed with the Chairman of the Panel within thirty (30) days after the requester receives notification that the request has been denied or after the requester receives any records being made available, in the event of partial denial.

(2) The Chairman of the Panel, within twenty (20) working days from the time of receipt of the appeal, except as provided in § 2411.8, shall make a determination on the appeal and respond in writing to the requester, determining whether, or the extent to which, the request shall be complied with.

(i) If the determination is to comply with the request and the request is expected to involve an assessed fee in excess of $25.00, the determination shall specify or estimate the fee involved and shall require prepayment of any charges due in accordance with the provisions of paragraph (a) of § 2411.10 before the records are made available.

(ii) Whenever possible, the determination relating to a request for records that involves a fee of less than $25.00 shall be accompanied by the requested records. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Panel.

(c) If on appeal the denial of the request for records is upheld in whole or in part by the Chairman of the Authority, the General Counsel, or the Chairman of the Panel, as appropriate, the person making the request shall be notified of the reasons for the determination, the name and title or position of the person responsible for the denial, and the provisions for judicial review of that determination under 5 U.S.C. 552(a)(4). Even though no appeal is filed from a denial in whole or in part of a request for records by the person making the request, the Chairman of the Authority, the General Counsel or the Chairman of the Panel, as appropriate, may, without regard to the time limit for filing of an appeal, sua sponte initiate consideration of a denial under this appeal procedure by written notification to the person making the request. In such event the time limit for making the determination shall commence with the issuance of such notification.

§ 2411.8 Extension of time limits.

In unusual circumstances as specified in this section, the time limits prescribed with respect to initial determinations or determinations on appeal may be extended by written notice from the officer handling the request (either initial or on appeal) to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in a total extension of more than ten (10) working days. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(a) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(b) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(c) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

§ 2411.9 Effect of failure to meet time limits.

Failure by the Authority, the General Counsel or the Panel either to deny or grant any request under this part within the time limits prescribed by the Freedom of Information Act, as amended, 5 U.S.C. 552, and these regulations shall be deemed to be an exhaustion of the administrative remedies available to the person making this request.

§ 2411.10 Fees.

Persons requesting records from the Authority, the General Counsel or the Panel shall be subject to a charge of fees for the direct cost of document search and duplication in accordance with the following schedules, procedures and conditions:

(a) The following fees shall be charged for disclosure of any record pursuant to this part:

(1) *Copying of records.* Ten cents per copy of each page.

(2) *Clerical searches.* $1.25 for each one-quarter hour spent by clerical personnel searching for and producing a requested record, including time spent copying any record.

(3) *Nonclerical searches.* $2.50 for each one-quarter hour spent by professional or managerial personnel searching for and producing a requested record, including time spent copying any record.

(4) *Forwarding material to destination.* Postage, insurance and special fees will be charged on an actual cost basis.

(b) All charges may be waived or reduced whenever it is in the public interest to do so.

(c) Requests for copies of transcripts of hearings should be made to the official hearing reporter. However, a person may request a copy of a transcript of a hearing from the Authority, the Panel or the General Counsel, as appropriate. In such instance, the Authority, the Panel or the General Counsel, as appropriate, may, by agreement with the person making the request, make arrangements with commercial firms for required services to be charged directly to the requester.

(d) No charge shall be made for the time spent in resolving legal or policy issues or in examining records for the purpose of deleting nondisclosable portions thereof.

(e) Payment of fees shall be made by check or money order payable to the U.S. Treasury.

§ 2411.11 Compliance with subpenas.

No member of the Authority or the Panel, or the General Counsel, or other officer or employee of the Authority, the Panel, or the General Counsel shall produce or present any files, documents, reports, memoranda, or records of the Authority, the Panel or the General Counsel, or testify in behalf of any party to any cause pending in any arbitration or in any court or before the Authority or the Panel, or any other board, commission, or administrative agency of the United States, territory, or the District of Columbia with respect to any information, facts, or other matter to their knowledge in their official capacity or with respect to the contents of any files, documents, reports, memoranda, or records of the Authority, the Panel or the General Counsel, whether in answer to a subpena, subpena duces tecum, or otherwise, without the written consent of the Authority, the Panel or the General Counsel, as appropriate. Whenever any subpena, the purpose for which is to adduce testimony or require the production of records as described above, shall have been served on any member or other officer or employee of the Authority, the Panel or the General Counsel, such person will, unless otherwise expressly directed by the Authority, the Panel or the General Counsel, as appropriate, and as provided by law, move pursuant to the applicable procedure to have such subpena invalidated on the ground that the evidence sought is privileged against disclosure by this rule.

§ 2411.12 Annual report.

On or before March 1 of each calendar year, the Executive Director of the Authority shall submit a report of the activities of the Authority, the General Counsel and the Panel with regard to public information requests during the preceding calendar year to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress. The report shall include for such calendar year all information required by 5 U.S.C. 552(d) and such other information as indicates the efforts of the Authority, the General Counsel and the Panel to administer fully the provisions of the Freedom of Information Act, as amended.

PART 2412—PRIVACY

Sec.

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AUTHORITY: 5 U.S.C. 552a.

SOURCE: 45 FR 3491, Jan. 17, 1980, unless otherwise noted.

§ 2412.1 Purpose and scope.

This part contains the regulations of the Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority and the Federal Service Impasses Panel implementing the Privacy Act of 1974, as amended, 5 U.S.C. 552a. The regulations apply to all records maintained by the Authority, the General Counsel and the Panel that are contained in a system of records, as defined herein, and that contain information about an individual. The regulations in this part set forth procedures that: (a) Authorize an individual's access to records maintained about the individual; (b) limit the access of other persons to those records; and (c) permit an individual to request the amendment or correction of records about the individual.

§ 2412.2 Definitions.

For the purposes of this part—

(a) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) "Maintain" includes maintain, collect, use or disseminate.

(c) "Record" means any item, collection or grouping of information about an individual that is maintained by the Authority, the General Counsel and the Panel including, but not limited to, the individual's education, financial transactions, medical history and criminal or employment history and that contains the individual's name, or the identifying number, symbol or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(d) "System of records" means a group of any records under the control of the Authority, the General Counsel and the Panel from which information is retrieved by the name of the individual or by some identifying particular assigned to the individual.

(e) "Routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 2412.3 Annual notice.

The Authority, the General Counsel and the Panel will publish in the FEDERAL REGISTER an annual notice describing the systems of records that the Authority, the General Counsel and the Panel maintain. Those notices shall include: (a) The system name; (b) the system location; (c) the categories of individuals covered by the system; (d) the categories of records in the system; (e) the authority of the Authority, the General Counsel and the Panel to maintain the system; (f) the routine uses of the system; (g) the policies and practices of the Authority, the General Counsel and the Panel for maintenance of the system; (h) the system manager; (i) the procedures for notification, access to and correction of records in the system; and (j) the sources of information for the system. Notices shall also be published, as required by the Privacy Act of 1974, of significant changes in or additions to the systems of records of the Authority, the General Counsel and the Panel.

§ 2412.4 Existence of records requests.

(a) An individual who desires to know if a system of records maintained by the Authority, the General Counsel and the Panel contains a record pertaining to the individual must submit a written inquiry as follows:

(1) If the system of records is located in a regional office of the Authority, it should be made to the appropriate Regional Director; and

(2) If the system of records is located in the office of the Authority, the General Counsel or the Panel in Washington, D.C., it should be made to the Deputy Director of Administration of the Authority, Washington, D.C.

(b) The request shall be in writing and should be clearly and prominently identified as a Privacy Act request. If the request is submitted by mail or otherwise submitted in an envelope or other cover, it should bear the legend "Privacy Act Request" on the envelope or other cover. If a request does not comply with the provisions of this paragraph, it shall not be deemed received until the time it is actually received by the appropriate Regional Director or the Deputy Director of Administration of the Authority, as appropriate.

(c) The inquiry must include the name and address of the individual and reasonably describe the system of records in question by the individual. Descriptions of the systems of records maintained by the Authority, the General Counsel and the Panel have been published in the FEDERAL REGISTER.

(d) The appropriate Regional Director or the Deputy Director of Administration of the Authority, as appropriate, will advise the individual in writing within ten (10) working days from receipt of the request whether the system of records named by the individual contains a record pertaining to the individual.

§ 2412.5 Individual access requests.

(a) Any individual who desires to inspect or receive copies of any record pertaining to the individual which is contained in a system of records maintained by the Authority, the General Counsel and the Panel must submit a written request reasonably identifying the records sought to be inspected or copied as follows:

(1) If the system of records is located in a regional office of the Authority, it should be made to the appropriate Regional Director; and

(2) If the system of records is located in the offices of the Authority, the General Counsel or the Panel in Washington, D.C., it should be made to the Deputy Director of Administration of the Authority, Washington, D.C.

(b) The request shall be in writing and should be clearly and prominently identified as a Privacy Act request. If the request is submitted by mail or otherwise submitted in an envelope or other cover, it should bear the legend "Privacy Act Request" on the envelope or other cover. If a request does not comply with the provisions of this paragraph, it shall not be deemed received until the time it is actually received by the appropriate Regional Director or the Deputy Director of Administration of the Authority, as appropriate.

(c) An individual seeking access to a record may, if desired, be accompanied by another person during review of the records. If the requester does desire to be accompanied by another person during the inspection, the requester must sign a statement, to be furnished to the Authority, the General Counsel or the Panel representative, as appropriate, at the time of the inspection, authorizing such other person to accompany the requester.

(d) Satisfactory identification (i.e., employee identification number, current address, and verification of signature) must be provided to the Authority, the General Counsel or the Panel representative, as appropriate, prior to review of the record.

§ 2412.6 Initial decision on access requests.

(a) Within ten (10) working days of the receipt of a request pursuant to § 2412.5, the appropriate Regional Director or the Deputy Director of Administration of the Authority, as appropriate, shall make an initial decision whether the requested records exist and whether they will be made available to the person requesting them. That initial decision shall immediately be communicated, in writing or other appropriate form, to the person who has made the request.

(b) Where the initial decision is to provide access to the requested records, the above writing or other appropriate communication shall:

(1) Briefly describe the records to be made available;

(2) State whether any records maintained, in the system of records in question, about the individual making the request are not being made available;

(3) State that the requested records will be available during ordinary office hours at the appropriate regional office or offices of the Authority, the General Counsel or the Panel, as appropriate; and

(4) State whether any further verification of the identity of the requesting individual is necessary.

(c) Where the initial decision is not to provide access to requested records, the appropriate Regional Director or the Deputy Director of Administration of the Authority, as appropriate, shall by writing or other appropriate communication explain the reason for that decision. The appropriate Regional Director or the Deputy Director of Administration of the Authority, as appropriate, shall only refuse to provide an individual access where:

(1) There is inadequate verification of identity under § 2412.5(d);

(2) In fact no such records are maintained; or

(3) The requested records have been compiled in a reasonable anticipation of civil or criminal action or proceedings.

§ 2412.7 Special procedures; medical records.

(a) If medical records are requested for inspection which, in the opinion of the appropriate Regional Director or the Deputy Director of Administration of the Authority, as appropriate, may be harmful to the requester if personally inspected by such person, such records will be furnished only to a licensed physician designated to receive such records by the requester. Prior to such disclosure, the requester must furnish a signed written authorization to make such disclosure and the physician must furnish a written request for the physician's receipt of such records to the appropriate Regional Director or the Deputy Director of Administration of the Authority, as appropriate.

(b) If such authorization is not executed within the presence of an Authority, General Counsel or Panel representative, the authorization must be accompanied by a notarized statement verifying the identification of the requester.

§ 2412.8 Limitations on disclosures.

(a) Requests for records about an individual made by person other than that individual shall also be directed as follows:

(1) If the system of records is located in a regional office of the Authority, it should be made to the appropriate Regional Director; and

(2) If the system of records is located in the offices of the Authority, the General Counsel or the Panel in Washington, D.C., it should be made to the Deputy Director of Administration of the Authority, Washington, D.C.

(b) Such records shall only be made available to persons other than that individual in the following circumstances:

(1) To any person with the prior written consent of the individual

about whom the records are maintained;

(2) To officers and employees of the Authority, the General Counsel and the Panel who need the records in the performance of their official duties;

(3) For a routine use compatible with the purpose for which it was collected;

(4) To any person to whom disclosure is required by the Freedom of Information Act, as amended, 5 U.S.C. 552;

(5) To the Bureau of the Census for uses pursuant to title 13 of the United States Code;

(6) In a form not individually identifiable to a recipient who has provided the Authority, the General Counsel and the Panel with adequate assurance that the record will be used solely as a statistical research or reporting record;

(7) To the National Archives of the United States or other appropriate entity as a record which has historical or other value warranting its preservation;

(8) To another agency or to an instrumentality of any governmental jurisdiction within or under control of the United States for a civil or criminal law enforcement activity that is authorized by law if the head of the agency or instrumentality has made a written request for the record to the Authority, the General Counsel or the Panel;

(9) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, provided that notification of such a disclosure shall be immediately mailed to the last known address of the individual;

(10) To either House of Congress or to any committee thereof with appropriate jurisdiction;

(11) To the Comptroller General in the performance of the official duties of the General Accounting Office; or

(12) Pursuant to the order of a court of competent jurisdiction.

(c) The request shall be in writing and should be clearly and prominently identified as a Privacy Act request and, if submitted by mail or otherwise submitted in an envelope or other cover, should bear the legend "Privacy Act Request" on the envelope or other cover. If a request does not comply with the provisions of this paragraph, it shall not be deemed received until the time it is actually received by the appropriate Regional Director or the Deputy Director of Administration of the Authority, as appropriate.

§ 2412.9 Accounting of disclosures.

(a) All Regional Directors of the Authority and the Deputy Director of Administration of the Authority shall maintain a record ("accounting") of every instance in which records about an individual are made available, pursuant to this part, to any person other than:

(1) Officers or employees of the Authority, the General Counsel or the Panel in the performance of their duties; or

(2) Any person pursuant to the Freedom of Information Act, as amended, 5 U.S.C. 552.

(b) The accounting which shall be retained for at least five (5) years or the life of the record, whichever is longer, shall contain the following information:

(1) A brief description of records disclosed;

(2) The date, nature and, where known, the purpose of the disclosure; and

(3) The name and address of the person or agency to whom the disclosure is made.

§ 2412.10 Requests for correction or amendment of records.

(a) After inspection of any records, if the individual disagrees with any information in the record, the individual may request that the records maintained about the individual be corrected or otherwise amended. Such request shall specify the particular portions of the record to be amended or corrected, the desired amendment or correction, and the reasons therefor.

(b) Such request shall be in writing and directed as follows:

(1) If the system of records is located in a regional office of the Authority, it should be made to the appropriate Regional Director; and

(2) If the system of records is located in the offices of the Authority, the General Counsel or the Panel in Washington, D.C., it should be made to the Deputy Director of Administration of the Authority, Washington, D.C.

§ 2412.11 Initial decision on correction or amendment.

(a) Within ten (10) working days from the date of receipt of a request for correction or amendment, the appropriate Regional Director or the Deputy Director of Administration of the Authority, as appropriate, will acknowledge receipt of the request and, under normal circumstances, not later than thirty (30) days from receipt of the request, will give the requesting individual notice, by mail or other appropriate means, of the decision regarding the request.

(b) Such notice of decision shall include:

(1) A statement whether the request has been granted or denied, in whole or in part;

(2) A quotation or description of any amendment or correction made to any records; and

(3) Where a request is denied in whole or in part, an explanation of the reason for that denial and of the requesting individual's right to appeal the decision to the Chairman of the Authority pursuant to § 2412.13.

§ 2412.12 Amendment or correction of previously disclosed records.

Whenever a record is amended or corrected pursuant to § 2412.11 or a written statement filed pursuant to § 2412.13, the appropriate Regional Director or the Deputy Director of Administration of the Authority, as appropriate, shall give notice of that correction, amendment or written statement to all persons to whom the records or copies thereof have been disclosed, as recorded in the accounting kept pursuant to § 2412.9.

§ 2412.13 Agency review of refusal to provide access to, or amendment or correction of, records.

(a) Any individual whose request for access to, or amendment or correction of, records of the Authority, the General Counsel or the Panel has been denied in whole or in part by an initial decision may, within thirty (30) days of the receipt of notice of the initial decision, appeal that decision by filing a written request for review of that decision with the Chairman of the Authority in Washington, D.C.

(b) The appeal shall describe:

(1) The request initially made by the individual for access to, or the amendment or correction of, records;

(2) The initial decision thereupon of the appropriate Regional Director or the Deputy Director of Administration; and

(3) The reasons why that initial decision should be modified by the Chairman of the Authority.

(c) Not later than thirty (30) working days from receipt of a request for review (unless such period is extended by the Chairman of the Authority for good cause shown), the Chairman of the Authority shall make a decision, and give notice thereof to the appealing individual, whether to modify the initial decision of the Regional Director or the Deputy Director of Administration, in any way. If the Chairman of the Authority upholds the Regional Director's or Deputy Director of Administration's initial decision not to provide access to requested records or not to amend or correct the records as requested, the Chairman of the Authority shall notify the appealing individual of the individual's right:

(1) To judicial review of the Chairman of the Authority's decision pursuant to 5 U.S.C. 552a(g)(1); and

(2) To file with the Authority a written statement of disagreement setting forth the reasons why the record should have been amended or corrected as requested. That written statement of disagreement shall be made a part of the record and shall accompany that record in any use or disclosure of the record.

§ 2412.14 Fees.

(a) As provided in this part, the Authority, the General Counsel or the Panel will provide a copy of the records to the individual to whom they pertain. There will be a charge of ten cents per copy of each page.

(b) Any charges may be waived or reduced whenever it is in the public interest to do so.

§ 2412.15 Penalties.

Any person who knowingly and willfully requests or obtains any record concerning an individual from the Authority, the General Counsel or the Panel under false pretenses shall be subject to criminal prosecution under 5 U.S.C. 552a(i)(3) which provides that such person shall be guilty of a misdemeanor and fined not more than $5,000.

PART 2413—OPEN MEETINGS

Sec.
2413.1 Purpose and scope.
2413.2 Public observation of meetings.
2413.3 Definition of meeting.
2413.4 Closing of meetings; reasons therefor.
2413.5 Action necessary to close meeting; record of votes.
2413.6 Notice of meetings; public announcement and publication.
2413.7 Transcripts, recordings or minutes of closed meeting; public availability; retention.

AUTHORITY: 5 U.S.C. 552b.

SOURCE: 45 FR 3494, Jan. 17, 1980, unless otherwise noted.

§ 2413.1 Purpose and scope.

This part contains the regulations of the Federal Labor Relations Authority implementing the Government in the Sunshine Act, 5 U.S.C. 552b.

§ 2413.2 Public observation of meetings.

Every portion of every meeting of the Authority shall be open to public observation, except as provided in § 2413.4, and Authority members shall not jointly conduct or dispose of agency business other than in accordance with the provisions of this part.

§ 2413.3 Definition of meeting.

For purposes of this part, "meeting" shall mean the deliberations of at least two (2) members of the Authority where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations to determine whether a meeting should be closed to public observation in accordance with the provisions of this part.

§ 2413.4 Closing of meetings; reasons therefor.

(a) Except where the Authority determines that the public interest requires otherwise, meetings, or portions thereof, shall not be open to public observation where the deliberations concern the issuance of a subpena, the Authority's participation in a civil action or proceeding or an arbitration, or the initiation, conduct or disposition by the Authority of particular cases of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing, or any court proceedings collateral or ancillary thereto.

(b) Meetings, or portions thereof, may also be closed by the Authority, except where it determines that the public interest requires otherwise, when the deliberations concern matters or information falling within the reasons for closing meetings specified in 5 U.S.C. 552b(c)(1) (secret matters concerning national defense or foreign policy); (c)(2) (internal personnel rules and practices); (c)(3) (matters specifically exempted from disclosure by statute); (c)(4) (privileged or confidential trade secrets and commercial or financial information); (c)(5) (matters of alleged criminal conduct or formal censure); (c)(6) (personal information where disclosure would cause a clearly unwarranted invasion of personal privacy); (c)(7) (certain materials or information from investigatory files compiled for law enforcement purposes); or (c)(9)(B) (disclosure would significantly frustrate implementation of a proposed agency action).

§ 2413.5 Action necessary to close meeting; record of votes.

A meeting shall be closed to public observation under § 2413.4, only when a majority of the members of the Authority who will participate in the meeting vote to take such action.

(a) When the meeting deliberations concern matters specified in § 2413.4(a), the Authority members shall vote at the beginning of the meeting, or portion thereof, on whether to close such meeting, or portion thereof, to public observation and on whether the public interest requires that a meeting which may properly be closed should nevertheless be open to public observation. A record of such vote, reflecting the vote of each member of the Authority, shall be kept and made available to the public at the earliest practicable time.

(b) When the meeting deliberations concern matters specified in § 2413.4(b), the Authority shall vote on whether to close such meeting, or portion thereof, to public observation, and on whether there is a public interest which requires that a meeting which may properly be closed should nevertheless be open to public observation. The vote shall be taken at a time sufficient to permit inclusion of information concerning the open or closed status of the meeting in the public announcement thereof. A single vote may be taken with respect to a series of meetings at which the deliberations will concern the same particular matters where such subsequent meetings are scheduled to be held within thirty (30) days after the initial meeting. A record of such vote, reflecting the vote of each member of the Authority, shall be kept and made available for the public within one (1) day after the vote is taken.

(c) Whenever any person whose interests may be directly affected by deliberations during a meeting, or a portion thereof, requests that the Authority close that meeting, or portion thereof, to public observation for any of the reasons specified in 5 U.S.C. 552b(c)(5) (matters of alleged criminal conduct or formal censure), (c)(6) (personal information where disclosure would cause a clearly unwarranted invasion of personal privacy), or (c)(7) (certain materials or information from investigatory files compiled for law enforcement purposes), the Authority members participating in the meeting, upon request of any one of its members, shall vote on whether to close such meeting, or a portion thereof, for that reason. A record of such vote, reflecting the vote of each member of the Authority participating in the meeting, shall be kept and made available to the public within one (1) day after the vote is taken.

(d) After public announcement of a meeting as provided in § 2413.6, a meeting, or portion thereof, announced as closed may be opened, or a meeting, or portion thereof, announced as open may be closed only if a majority of the members of the Authority who will participate in the meeting determine by a recorded vote that Authority business so requires and that an earlier announcement of the change was not possible. The change made and the vote of each member on the change shall be announced publicly at the earliest practicable time.

(e) Before a meeting may be closed pursuant to § 2413.4, the Solicitor of the Authority shall certify that in the Solicitor's opinion the meeting may properly be closed to public observation. The certification shall set forth each applicable exemptive provision for such closing. Such certification shall be retained by the agency and made publicly available as soon as practicable.

§ 2413.6 Notice of meetings; public announcement and publication.

(a) A public announcement setting forth the time, place and subject matter of meetings, or portions thereof, closed to public observation pursuant to the provisions of § 2413.4(a), shall be made at the earliest practicable time.

(b) Except for meetings closed to public observation pursuant to the provisions of § 2413.4(a), the agency shall make public announcement of each meeting to be held at least seven (7) days before the scheduled date of the meeting. The announcement shall specify the time, place and subject matter of the meeting, whether it is to be open to public observation or closed, and the name, address, and phone number of an agency official designated to respond to requests for information about the meeting. The seven (7) day period for advance notice may be shortened only upon a determination by a majority of the members of the Authority who will participate in the meeting that agency business requires that such meeting be called at an earlier date, in which event the public announcements shall be made at the earliest practicable time. A record of the vote to schedule a meeting at an earlier date shall be kept and made available to the public.

(c) Within one (1) day after a vote to close a meeting, or any portion thereof, pursuant to the provisions § 2413.4(b), the agency shall make publicly available a full written explanation of its action closing the meeting, or portion thereof, together with a list of all persons expected to attend the meeting and their affiliation.

(d) If after public announcement required by paragraph (b) of this section has been made, the time and place of the meeting are changed, a public announcement shall be made at the earliest practicable time. The subject matter of the meeting may be changed after the public announcement only if a majority of the members of the Authority who will participate in the meeting determine that agency business so requires and that no earlier announcement of the change was possible. When such a change in subject matter is approved, a public announcement of the change shall be made at the earliest practicable time. A record of the vote to change the subject matter of the meeting shall be kept and made available to the public.

(e) All announcements or changes thereto issued pursuant to the provisions of paragraphs (b) and (d) of this section or pursuant to the provisions of § 2413.5(d) shall be submitted for publication in the FEDERAL REGISTER immediately following their release to the public.

(f) Announcements of meetings made pursuant to the provisions of this section shall be made publicly available by the Executive Director.

§ 2413.7 Transcripts, recordings or minutes of closed meeting; public availability; retention.

(a) For every meeting, or portion thereof, closed under the provisions of § 2413.4, the presiding officer shall prepare a statement setting forth the time and place of the meeting and the persons present, which statement shall be retained by the agency. For each such meeting, or portion thereof, there shall also be maintained a complete transcript or electronic recording of the proceedings, except that for meetings closed pursuant to § 2413.4(a), the Authority may, in lieu of a transcript or electronic recording, maintain a set of minutes fully and accurately summarizing any action taken, the reasons therefor and views thereon, documents considered and the members' vote on each rollcall vote.

(b) The agency shall make promptly available to the public copies of transcripts, recordings or minutes maintained as provided in accordance with paragraph (a) of this section, except to the extent the items therein contain information which the agency determines may be withheld pursuant to the provisions of 5 U.S.C. 552b(c). Copies of transcripts or minutes, or transcriptions of electronic recordings including the identification of speakers, shall to the extent determined to be publicly available, be furnished to any person, subject to the payment of duplication costs in accordance with the schedule of fees set forth in § 2411.10 of this subchapter and the actual cost of transcription.

(c) The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes; or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two (2) years after such meeting or until one (1) year after the conclusion of any agency proceeding with respect to which the meeting or portion was held whichever occurs later.

PART 2414—EX PARTE COMMUNICATIONS

Sec.

2414.1 Purpose and scope.
2414.2 Unauthorized communications.
2414.3 Definitions.
2414.4 Duration of prohibition.
2414.5 Communications prohibited.
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2414.7 Solicitation of prohibited communications.
2414.8 Reporting of prohibited communications; penalties.
2414.9 Penalties and enforcement.

AUTHORITY: 5 U.S.C. 7134.

SOURCE: 45 FR 3495, Jan. 17, 1980, unless otherwise noted.

§ 2414.1 Purpose and scope.

This part contains the regulations of the Federal Labor Relations Authority relating to ex parte communications.

§ 2414.2 Unauthorized communications.

(a) No interested person outside this agency shall, in any agency proceeding subject to 5 U.S.C. 557(a), make or knowingly cause to be made any prohibited ex parte communication to any Authority member, Administrative Law Judge, or other Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding.

(b) No Authority member, Administrative Law Judge, or other Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding relevant to the merits of the proceeding shall: (1) Request any prohibited ex parte communications; or (2) make or knowingly cause to be made any prohibited ex parte communications about the proceeding to any interested person outside this agency relevant to the merits of the proceeding.

§ 2414.3 Definitions.

When used in this part:

(a) The term "person outside this agency," to whom the prohibitions apply, shall include any individual outside the Authority, labor organization, agency, or other entity, or an agent thereof, and the General Counsel or his representative when prosecuting an unfair labor practice proceeding before the Authority pursuant to 5 U.S.C. 7118.

(b) The term "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, subject however, to the provisions of §§ 2414.5 and 2414.6.

§ 2414.4 Duration of prohibition.

Unless otherwise provided by specific order of the Authority entered in the proceeding, the prohibition of § 2414.2 shall be applicable in any agency proceeding subject to 5 U.S.C. 557(a) beginning at the time of which the proceeding is noticed for hearing, unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of such person's acquisition of such knowledge.

§ 2414.5 Communications prohibited.

Except as provided in § 2414.6, ex parte communications prohibited by § 2414.2 shall include:

(a) Such communications, when written, if copies thereof are not contemporaneously served by the communicator on all parties to the proceeding in accordance with the provisions of Part 2429 of this chapter; and

(b) Such communications, when oral, unless advance notice thereof is given by the communicator to all parties in the proceeding and adequate opportunity afforded to them to be present.

§ 2414.6 Communications not prohibited.

Ex parte communications prohibited by § 2414.2 shall not include:

(a) Oral or written communications which relate solely to matters which the Hearing Officer, Regional Director, Administrative Law Judge, General Counsel or member of the Authority is authorized by law or Authority rules to entertain or dispose of on an ex parte basis;

(b) Oral or written requests for information solely with respect to the status of a proceeding;

(c) Oral or written communications which all the parties to the proceeding agree, or which the responsible official formally rules, may be made on an ex parte basis;

(d) Oral or written communications proposing settlement or an agreement for disposition of any or all issues in the proceeding;

(e) Oral or written communications which concern matters of general significance to the field of labor-management relations or administrative practice and which are not specifically related to any agency proceeding subject to 5 U.S.C. 557(a); or

(f) Oral or written communications from the General Counsel to the Authority when the General Counsel is acting on behalf of the Authority under 5 U.S.C. 7123(d).

§ 2414.7 Solicitation of prohibited communications.

No person shall knowingly and willfully solicit the making of an unauthorized ex parte communication by any other person.

§ 2414.8 Reporting of prohibited communications; penalties.

(a) Any Authority member, Administrative Law Judge, or other Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding relevant to the merits of the proceeding to whom a prohibited oral ex parte communication is attempted to be made, shall refuse to listen to the communication, inform the communicator of this rule, and advise such person that if the person has anything to say it should be said in writing with copies to all parties. Any such Authority member, Administrative Law Judge, or other Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding relevant to the merits of the proceeding who receives, or who makes or knowingly causes to be made, an unauthorized ex parte communication, shall place or cause to be placed on the public record of the proceeding: (1) The communication, if it was written; (2) a memorandum stating the substance of the communication, if it was oral; (3) all written responses to the prohibited communication; and (4) memoranda stating the substance of all oral responses to the prohibited communication. The Executive Director, if the proceeding is then pending before the Authority, the Administrative Law Judge, if the proceeding is then pending before any such judge, or the Regional Director, if the proceeding is then pending before a Hearing Officer or the Regional Director, shall serve copies of all such materials placed on the public record of the proceeding on all other parties to the proceeding and on the attorneys of record for the parties. Within ten (10) days after the mailing of such copies, any party may file with the Executive Director, Administrative Law Judge, or Regional Director serving the communication, as appropriate, and serve on all other parties, a statement setting forth facts or contentions to rebut those contained in the prohibited communication. All such responses shall be placed in the public record of the proceeding, and provision may be made for any further action, including reopening of the record, which may be required under the circumstances. No action taken pursuant to this provision shall constitute a waiver of the power of the Authority to impose an appropriate penalty under § 2414.9.

§ 2414.9 Penalties and enforcement.

(a) Where the nature and circumstances of a prohibited communication made by or caused to be made by a party to the proceeding are such that the interests of justice and statutory policy may require remedial action, the Authority, Administrative Law Judge, or Regional Director, as appropriate, may issue to the party making the communication a notice to show cause, returnable before the Authority, Administrative Law Judge, or Regional Director, within a stated period not less than seven (7) days from the date thereof, why the Authority, Administrative Law Judge, or Regional Director should not determine that the interests of justice and statutory policy require that the claim or interest in the proceeding of a party who knowingly makes a prohibited communication or knowingly causes a prohibited communication to be made, should be dismissed, denied, disregarded or otherwise adversely affected on account of such violation.

(b) Upon notice and hearing, the Authority may censure, suspend, or revoke the privilege of practice before the agency of any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication. However, before the Authority institutes formal proceedings under this subsection, it shall first advise the person or persons concerned in writing that it proposes to take such action and that they may show cause, within a period to be stated in such written advice, but not less than seven (7) days from the date thereof, why it should not take such action.

(c) The Authority may censure, or, to the extent permitted by law, suspend, dismiss, or institute proceedings for the dismissal of, any Authority agent who knowingly and willfully violates the prohibitions and requirements of this rule.

PART 2415—EMPLOYEE RESPONSIBILITIES AND CONDUCT

§ 2415.1 Employee responsibilities and conduct.

The Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority and the Federal Service Impasses Panel, respectively, hereby adopt the rules and regulations contained in Parts 735 and 737 of title 5 of the Code of Federal Regulations, prescribing standards of conduct and responsibilities, and governing statements reporting employment and financial interests for officers and employees, including special Government employees, for application, as appropriate, to the officers and employees, including special Government employees, of the Authority, the General Counsel and the Panel.

(E.O. 11222, 30 FR 6469, 3 CFR, 1964-65 Comp., p. 306; 5 CFR 735.101 *et seq.* and 737.1 *et seq.;* Pub L. 95-521; 44 FR 19974)

[45 FR 3496, Jan. 17, 1980]

SUBCHAPTER C—FEDERAL LABOR RELATIONS AUTHORITY AND GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY

PART 2420—PURPOSE AND SCOPE

§ 2420.1 Purpose and scope.

The regulations contained in this subchapter are designed to implement the provisions of chapter 71 of title 5 of the United States Code. They prescribe the procedures, basic principles or criteria under which the Federal Labor Relations Authority or the General Counsel of the Federal Labor Relations Authority, as applicable, will:

(a) Determine the appropriateness of units for labor organization representation under 5 U.S.C. 7112;

(b) Supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of 5 U.S.C. 7111 relating to the according of exclusive recognition to labor organizations;

(c) Resolve issues relating to the granting of national consultation rights under 5 U.S.C. 7113;

(d) Resolve issues relating to determining compelling need for agency rules and regulations under 5 U.S.C. 7117(b);

(e) Resolve issues relating to the duty to bargain in good faith under 5 U.S.C. 7117(c);

(f) Resolve issues relating to the granting of consultation rights with respect to conditions of employment under 5 U.S.C. 7117(d);

(g) Conduct hearings and resolve complaints of unfair labor practices under 5 U.S.C. 7118;

(h) Resolve exceptions to arbitrators' awards under 5 U.S.C. 7122; and

(i) Take such other actions as are necessary and appropriate effectively to administer the provisions of chapter 71 of title 5 of the United States Code.

(5 U.S.C. 7134)

[45 FR 3497, Jan. 17, 1980]

PART 2421—MEANING OF TERMS AS USED IN THIS SUBCHAPTER

Sec.
2421.1 Federal Service Labor-Management Relations Statute.
2421.2 Terms defined in 5 U.S.C. 7103(a); General Counsel; Assistant Secretary.
2421.3 National consultation rights; consultation rights on Government-wide rules or regulations; exclusive recognition; unfair labor practices.
2421.4 Activity.
2421.5 Primary national subdivision.
2421.6 Regional Director.
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2421.8 Hearing Officer.
2421.9 Administrative Law Judge.
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2421.14 Appropriate unit.
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2421.16 Showing of interest.
2421.17 Regular and substantially equivalent employment.

AUTHORITY: 5 U.S.C. 7134.

SOURCE: 45 FR 3497, Jan. 17, 1980, unless otherwise noted.

§ 2421.1 Federal Service Labor-Management Relations Statute.

The term "Federal Service Labor-Management Relations Statute" means chapter 71 of title 5 of the United States Code.

§ 2421.2 Terms defined in 5 U.S.C. 7103(a); General Counsel; Assistant Secretary.

(a) The terms "person," "employee," "agency," "labor organization," "dues," "Authority," "Panel," "collective bargaining agreement," "grievance," "supervisor," "management official," "collective bargaining," "confidential employee," "conditions of employment," "professional employee," "exclusive representative," "firefighter," and "United States," as used herein shall have the meanings set forth in 5 U.S.C. 7103(a).

(b) The term "General Counsel" means the General Counsel of the Authority.

(c) The term "Assistant Secretary" means the Assistant Secretary of Labor for Labor-Management Relations.

§ 2421.3 National consultation rights; consultation rights on Government-wide rules or regulations; exclusive recognition; unfair labor practices.

(a) "National consultation rights" has the meaning as set forth in 5 U.S.C. 7113;

(b) "Consultation rights on Government-wide rules or regulations" has the meaning as set forth in 5 U.S.C. 7117(d);

(c) "Exclusive recognition" has the meaning as set forth in 5 U.S.C. 7111; and

(d) "Unfair labor practices" has the meaning as set forth in 5 U.S.C. 7116.

§ 2421.4 Activity.

"Activity" means any facility, organizational entity, or geographical subdivision or combination thereof, of any agency.

§ 2421.5 Primary national subdivision.

"Primary national subdivision" of an agency means a first-level organizational segment which has functions national in scope that are implemented in field activities.

§ 2421.6 Regional Director.

"Regional Director" means the Director of a region of the Authority with geographical boundaries as fixed by the Authority.

§ 2421.7 Executive Director.

"Executive Director" means the Executive Director of the Authority.

§ 2421.8 Hearing Officer.

"Hearing Officer" means the individual designated to conduct a hearing involving a question concerning the appropriateness of a unit or such other matters as may be assigned.

§ 2421.9 Administrative Law Judge.

"Administrative Law Judge" means the Chief Administrative Law Judge or any Administrative Law Judge designated by the Chief Administrative Law Judge to conduct a hearing in cases under 5 U.S.C. 7116, and such other matters as may be assigned.

§ 2421.10 Chief Administrative Law Judge.

"Chief Administrative Law Judge" means the Chief Administrative Law Judge of the Authority.

§ 2421.11 Party.

"Party" means (a) any person: (1) Filing a charge, petition, or request; (2) named in a charge, complaint, petition, or request; (3) whose intervention in a proceeding has been permitted or directed by the Authority; (4) who participated as a party (i) in a matter that was decided by an agency head under 5 U.S.C. 7117, or (ii) in a matter where the award of an arbitrator was issued; and (b) the General Counsel, or the General Counsel's designated representative, in appropriate proceedings.

§ 2421.12 Intervenor.

"Intervenor" means a party in a proceeding whose intervention has been permitted or directed by the Authority, its agents or representatives.

§ 2421.13 Certification.

"Certification" means the determination by the Authority, its agents or representatives, of the results of an election, or the results of a petition to consolidate existing exclusively recognized units.

§ 2421.14 Appropriate unit.

"Appropriate unit" means that grouping of employees found to be appropriate for purposes of exclusive recognition under 5 U.S.C. 7111, and for purposes of allotments to representatives under 5 U.S.C. 7115(c), and consistent with the provisions of 5 U.S.C. 7112.

§ 2421.15 Secret ballot.

"Secret ballot" means the expression by ballot, voting machine or otherwise, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed, except in that instance in which any determinative challenged ballot is opened.

§ 2421.16 Showing of interest.

"Showing of interest" means evidence of membership in a labor organization; employees' signed and dated authorization cards or petitions authorizing a labor organization to represent them for purposes of exclusive recognition; allotment of dues forms executed by an employee and the labor organization's authorized official; current dues records; an existing or recently expired agreement; current exclusive recognition or certification; employees' signed and dated petitions or cards indicating that they no longer desire to be represented for the purposes of exclusive recognition by the currently recognized or certified labor organization; employees' signed and dated petitions or cards indicating a desire that an election be held on a proposed consolidation of units; or other evidence approved by the Authority.

§ 2421.17 Regular and substantially equivalent employment.

"Regular and substantially equivalent employment" means employment that entails substantially the same amount of work, rate of pay, hours, working conditions, location of work, kind of work, and seniority rights, if any, of an employee prior to the cessation of employment in an agency because of any unfair labor practice under 5 U.S.C. 7116.

PART 2422—REPRESENTATION PROCEEDINGS

Sec.

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AUTHORITY: 5 U.S.C. 7134.

SOURCE: 45 FR 3498, Jan. 17, 1980, unless otherwise noted.

§ 2422.1 Who may file petitions.

(a) A petition for exclusive recognition may be filed by a labor organization requesting an election to determine whether it should be recognized as the exclusive representative of employees of an agency in an appropriate unit or should replace another labor organization as the exclusive representative of employees in an appropriate unit.

(b) A petition for an election to determine if a labor organization should cease to be the exclusive representative because it does not represent a majority of employees in the existing unit may be filed by any employee or employees or an individual acting on behalf of any employee(s).

(c) A petition seeking to clarify a matter relating to representation may be filed by an activity or agency where the activity or agency has a good faith doubt, based on objective considerations, that the currently recognized or certified labor organization represents a majority of the employees in the existing unit or that, because of a substantial change in the character and scope of the unit, it has a good faith doubt that such unit is now appropriate.

(d) A petition for clarification of an existing unit or for amendment of recognition or certification may be filed by an activity or agency or by a labor organization which is currently recognized by the activity or agency as an exclusive representative.

(e) A petition for determination of eligibility for dues allotment (pursuant to 5 U.S.C. 7115(c)) may be filed by a labor organization.

(f) A petition to consolidate existing exclusively recognized units may be filed by a labor organization, or by an activity or agency, or by a labor organization and an activity or agency jointly.

§ 2422.2 Contents of petition; procedures for consolidation of existing exclusively recognized units; filing and service of petition; challenges to petition.

(a) *Petition for exclusive recognition.* A petition by a labor organization for exclusive recognition shall be submitted on a form prescribed by the Authority and shall contain the following:

(1) The name of the activity and the agency involved, their addresses, telephone numbers, and the persons to contact and their titles, if known;

(2) A description of the unit claimed to be appropriate for purposes of exclusive representation by the petitioner. Such description shall indicate generally the geographic locations and the classifications of employees sought to be included and those sought to be excluded and the approximate number of employees in the unit claimed to be appropriate;

(3) Name, address, and telephone number of the recognized or certified representative, if any, and the date of such recognition or certification and the expiration date of any applicable agreement, if known to the petitioner;

(4) Names, addresses, and telephone number of any other interested labor organizations, if known to the petitioner;

(5) Name, and affiliation, if any, of the petitioner and its address and telephone number;

(6) A statement that the petitioner has submitted to the activity or the agency and to the Assistant Secretary a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives;

(7) A declaration by such person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1101), that its contents are true and correct to the best of such person's knowledge and belief;

(8) The signature of the petitioner's representative, including such person's title and telephone number; and

(9) The petition shall be accompanied by a showing of interest of not less than thirty percent (30%) of the employees in the unit claimed to be appropriate and an alphabetical list of names constituting such showing.

(b) *Activity or agency petition seeking clarification of a matter relating to representation; employee petition for an election to determine whether a labor organization should cease to be an exclusive representative.* (1) A petition by an activity or agency shall be submitted on a form prescribed by the Authority and shall contain the information set forth in paragraph (a) of this section, except paragraphs (a)(6) and (9) of this section, and a statement that the activity or agency has a good faith doubt, based on objective considerations, that the currently recognized or certified labor organization represents a majority of the employees in the existing unit; or a statement that because of a substantial change in the character and scope of the unit, the agency or activity has a good faith doubt that such unit is now appropriate. Attached to the petition shall be a detailed explanation of the reasons supporting the good faith doubt.

(2) A petition by any employee or employees or an individual acting on behalf of any employee(s) shall contain the information set forth in paragraph (a) of this section, except paragraphs (6) and (9) of paragraph (a) of this section, and it shall be accompanied by a showing of interest of not less than thirty percent (30%) of the employees in the unit indicating that the employees no longer desire to be represented for the purposes of exclusive recognition by the currently recognized or certified labor organization and an alphabetical list of names constituting such showing.

(c) *Petition for clarification of unit or for amendment of recognition or certification.* A petition for clarification of unit or for amendment of recognition or certification shall be submitted on a form prescribed by the Authority and shall contain the information required by paragraph (a) of this section, except paragraphs (2), (6) and (9) of paragraph (a) of this section, and shall set forth:

(1) A description of the present unit and the date of recognition or certification;

(2) The proposed clarification or amendment of the recognition or certification; and

(3) A statement of reasons why the proposed clarification or amendment is requested.

(d) *Petition for determination of eligibility for dues allotment.* (1) A petition for determination of eligibility for dues allotment in a unit in which there is no exclusive representative shall be submitted on a form prescribed by the Authority and shall contain the information required in paragraphs (1), (4), (5), (6), (7), and (8) of paragraph (a) of this section, and shall set forth:

(i) A description of the unit claimed to be appropriate. Such description shall indicate generally the geographic locations and the classifications of employees sought to be included and those sought to be excluded and the approximate number of employees in the unit claimed to be appropriate; and

(ii) The petition shall be accompanied by a showing of membership in the petitioner of not less than ten percent (10%) of the employees in the unit claimed to be appropriate and an alphabetical list of names constituting such showing.

(e) *Filing and service of petition and copies.* (1) A petition for exclusive recognition, for an election to determine if a labor organization should cease to be the exclusive representative, for clarification of unit, for amendment of recognition or certification, or for determination of eligibility for dues allotment, filed pursuant to paragraphs (a), (b), (c), or (d) of this section respectively, shall be filed with the Regional Director for the region in which the unit exists, or, if the claimed unit exists in two or more regions, the petition shall be filed with the Regional Director for the region in which the headquarters of the activity is located.

(2) An original and four (4) copies of a petition shall be filed, together with a statement of any other relevant facts and of all correspondence relating to the question concerning representation.

(3) Copies of the petition together with any attachments shall be served by the petitioner on all known interested parties, and a written statement of such service shall be filed with the Regional Director: *Provided, however,* That the showing of interest or the showing of membership submitted with a petition filed pursuant to paragraphs (a), (b)(2), (d), or (h) of this section shall not be furnished to any other person.

(f) *Adequacy and validity of showing of interest or showing of membership.* (1) The Regional Director shall determine the adequacy of the showing of interest or the showing of membership administratively, and such determination shall not be subject to collateral attack at a unit or representation hearing. A Regional Director's Decision and Order dismissing a petition or denying intervention shall be final: *Provided, however,* That an application for review of the Regional Director's Decision and Order may be filed with the Authority in accordance with the procedure set forth in § 2422.17.

(2) Any party challenging the validity of any showing of interest or showing of membership of a petitioner, or of a cross-petitioner filing pursuant to § 2422.5(b), or of a labor organization seeking to intervene pursuant to § 2422.5, must file its challenge with the Regional Director, with respect to the petitioner or a cross-petitioner, within ten (10) days after the initial date of posting of the notice of petition as provided in § 2422.4(a), and with respect to any labor organization seeking to intervene, within ten (10) days of service of copy of the request for intervention on the challenging party. The challenge shall be supported with evidence including signed statements of employees and any other written evidence. The Regional

Director shall investigate the challenge and thereafter shall take such action as the Regional Director deems appropriate which shall be final and not subject to the filing of an application for review with the Authority unless the Regional Director issues a Decision and Order dismissing a petition or denying intervention on the basis of the challenge. Such a Regional Director Decision and Order shall be final: *Provided, however,* That an application for review of the Regional Director's Decision and Order may be filed with the Authority in accordance with the procedure set forth in § 2422.17.

(g) Challenge to status of a labor organization. Any party challenging the status of a labor organization under chapter 71 of title 5 of the United States Code must file its challenge with the Regional Director and support the challenge with evidence. With respect to the petitioner or a cross-petitioner filing pursuant to § 2422.5(b), such a challenge must be filed within ten (10) days after the initial date of posting of the notice of petition as provided in § 2422.4(a), and with respect to a labor organization seeking to intervene pursuant to § 2422.5, within ten (10) days after service of a copy of the request for intervention on the challenging party. The Regional Director shall investigate the challenge and thereafter shall take such action as the Regional Director deems appropriate. A Regional Director's Decision and Order on such challenge shall be final: *Provided, however,* That an application for review of the Regional Director's Decision and Order may be filed with the Authority in accordance with the procedure set forth in § 2422.17.

(h) *Petition and procedures for consolidation of existing exclusively recognized units.* (1) Action to be taken before filing a petition to consolidate existing exclusively recognized units:

(i) A request in writing must be served by a labor organization or by two or more labor organizations jointly within a single agency, on an activity(ies) or agency, or must be served by an activity(ies) or agency on a labor organization(s), requesting the consolidation of existing exclusively recognized units represented by the labor organization(s); and

(ii) The request shall contain a clear and concise description of the existing exclusively recognized units sought to be consolidated and whether the labor organization(s), activity(ies) or agency involved desire(s) the consolidation with or without an election.

(2) When and where a petition to consolidate existing exclusively recognized units may be filed:

(i) If the labor organization(s), activity(ies) or agency involved rejects in writing or fails to respond to the requested consolidation of units within thirty (30) days after the service of the request, the labor organization(s), activity(ies) or agency involved may file a petition to consolidate existing exclusively recognized units. The petition must be filed with the Regional Director for the region where the headquarters of the activity or agency of the proposed consolidated unit is located: *Provided, however,* That where a petition to consolidate existing exclusively recognized units involves two or more activities, such petition may be filed with the Regional Director for the region where the headquarters of any of the activities involved is located;

(ii) If there is a bilateral agreement to consolidate existing exclusively recognized units, the labor organization(s), activity(ies) or agency involved, may individually or jointly file a petition for an election in the proposed unit with the appropriate Regional Director as set forth in paragraph (h)(2)(i) of this section; and

(iii) If the labor organization(s), activity(ies) or agency involved bilaterally agree to consolidate existing exclusively recognized units without an election, thay may individually or jointly file a petition to consolidate such units without an election with the appropriate Regional Director as set forth in paragraph (h)(2)(i) of this section.

(3) A petition to consolidate existing exclusively recognized units shall contain the information required by paragraph (a) of this section, except paragraphs (2), (3), (6), and (9) and shall set forth:

(i) A description of the proposed consolidated unit claimed to be appropriate for the purpose of exclusive representation. Such description shall indicate generally the geographic locations and the classifications of employees sought to be included and those sought to be excluded and the approximate number of employees in the consolidated unit claimed to be appropriate for the purpose of exclusive recognition;

(ii) A description of each existing exclusively recognized unit encompassed by the petition, the dates of recognition or certification, the name(s) and address(es) of the exclusively recognized labor organization(s) involved, and the approximate number of employees in each unit;

(iii) A statement that a request to consolidate existing exclusively recognized units has been served on the labor organization(s), activity(ies) or agency involved and the date of the service of such request; and

(iv) A statement as appropriate:

(A) That the labor organization(s), activity(ies) or agency involved agree to consolidate existing exclusively recognized units without an election;

(B) That the labor organization(s), activity(ies) or agency involved desire(s) the Authority to hold an election on the issue of the proposed consolidation;

(C) That the labor organization(s), activity(ies) or agency involved has rejected or has failed to respond to the request to consolidate together with the date of the service of the written rejection, if any; and

(D) The name(s) of the labor organization(s), activity(ies) or agency involved that should appear on the certification on consolidation of units, if such a certificate is issued.

(4) The following govern petitions filed under this paragraph:

(i) Upon the request of the Regional Director, after the filing of a petition to consolidate existing exclusively recognized units, the activity(ies) or agency involved shall post copies of a notice to all employees in places where notices are normally posted affecting the employees in the exclusively recognized units involved in the proceeding; and

(ii) Such notice shall set forth, as appropriate:

(A) The name(s) of petitioner(s);

(B) The description of the proposed consolidated unit;

(C) A statement that a petition for an election in the proposed unit has been filed, or, in the event there is a bilateral agreement to consolidate without an election, a statement that if, within ten (10) days after the date of posting of such notice, thirty percent (30%) or more of the employees in the proposed consolidated unit have notified the Regional Director in writing that they desire the Authority to hold an election on the issue of the proposed consolidation, such an election will be conducted or supervised by the Regional Director.

(5) The notice shall remain posted for a period of ten (10) days. It shall be posted conspicuously and shall not be covered by other material, altered or defaced.

(6) The Regional Director shall make such investigation as the Regional Director deems necessary and thereafter shall issue and serve on the labor organization(s) and activity(ies) or agency involved a Decision and Order with respect to the petition to consolidate existing exclusively recognized units. The Regional Director's Decision and Order shall be final; *Provided, however,* That an application for review of the Regional Director's Decision and Order may be filed with the Authority in accordance with the procedure set forth in § 2422.17. If no application for review is filed, or if one is filed and denied, or if the Authority does not undertake to grant review of the action within sixty (60) days after the filing of an application for review, the Regional Director shall take such action as may be appropriate, which may include issuance of a certification on consolidation of units: *Provided, however,* That where the Regional Director approves a withdrawal request, or determines to supervise or conduct an election, or to issue a notice of hearing, no such Decision and Order shall be issued and such action shall not be subject to the filing of an application for review with the Authority. The Regional Director, if appropriate, may cause a notice of hearing to be

issued where substantial factual issues exist warranting a hearing. Hearings shall be conducted by Hearing Officers in accordance with §§ 2422.9 through 2422.15 and after the close of the hearing a Decision and Order shall be issued by the Regional Director in accordance with § 2422.16.

(7) Agreement for Unit Consolidation Election:

(i) Where an election is appropriate because the petitioner(s) or thirty percent (30%) of the affected employees desire the Authority to hold an election on the consolidation issue, the labor organization(s), activity(ies) or agency involved must sign an agreement providing for such an election on a form prescribed by the Authority. The agreement shall be filed with the appropriate Regional Director;

(ii) The labor organization(s), activity(ies) or agency involved shall agree on the eligibility period for participation in the election, the date(s), hour(s) and place(s) of the election and other related election procedures. In the event that they cannot agree, the Regional Director, acting on behalf of the Authority, shall decide these matters; and

(iii) If the Regional Director approves the agreement, the election by secret ballot shall be conducted by the activity(ies) or agency, as appropriate, under the supervision of the Regional Director, in accordance with §§ 2422.18 (a), (b), (c), and (f), 2422.19, 2422.20, and 2422.21. There shall be no runoff elections.

(8) Upon the issuance of a certification on consolidation of units, the terms and conditions of existing agreements covering those units embodied in the consolidation shall remain in effect except as mutually agreed to by the parties until a new agreement covering the consolidated unit becomes effective.

[45 FR 3498, Jan. 17, 1980, as amended at 48 FR 40190, Sept. 6, 1983]

§ 2422.3 Timeliness of petition.

(a) When there is no certified exclusive representative of the employees, a petition will be considered timely filed provided the petition is not for the same unit or subdivision thereof in which a valid election has been held within the preceding twelve (12) month period.

(b) When there is a certified exclusive representative of the employees, a petition will not be considered timely if filed within twelve (12) months after the certification as the exclusive representative of employees in an appropriate unit, unless a signed and dated agreement covering the claimed unit has been entered into in which case paragraphs (c) and (d) of this section shall be applicable.

(c) When an agreement covering a claimed unit has been signed and dated by the activity and the incumbent exclusive representative, a petition for exclusive recognition or other election petition will not be considered timely if filed during the period of review by the head of an agency as set forth in 5 U.S.C. 7114(c), absent unusual circumstances.

(d) A petition for exclusive recognition or other election petition will be considered timely when filed as follows:

(1) Not more than one hundred and five (105) days and not less than sixty (60) days prior to the expiration date of an agreement having a term of three (3) years or less from the date it became effective.

(2) Not more than one hundred and five (105) days and not less than sixty (60) days prior to the expiration of the initial three (3) year period of an agreement having a term of more than three (3) years from the date it became effective, and any time after the expiration of the initial three (3) year period of such an agreement; and

(3) Any time when unusual circumstances exist which substantially affect the unit or the majority representation.

(e) When an agreement having a term of three (3) years or less is in effect between the activity and the incumbent exclusive representative, and a petition has been filed challenging the representation status of the incumbent exclusive representative and the petition is subsequently withdrawn or dismissed less than sixty (60) days prior to the expiration date of that agreement, or any time thereafter, the activity and incumbent exclusive representative shall be afforded a ninety (90) day period from the date the withdrawal is approved or the petition is dismissed free from rival claim within which to consummate an agreement: *Provided, however,* That the provisions of this paragraph shall not be applicable when any other petition is pending which has been filed pursuant to paragraph (d)(1) of this section.

(f) When an extension of an agreement having a term of three (3) years or less has been signed more than sixty (60) days before its expiration date, such extension shall not serve as a basis for the denial of a petition submitted in accordance with the time limitations provided herein.

(g) When an election has been held to consolidate existing exclusively recognized units and no certification on consolidation of units has been issued, a petition to consolidate will be considered timely filed provided the petition is not for the same unit or subdivision thereof in which a valid consolidation election has been held within the preceding twelve (12) month period.

(h) When there is a certification on consolidation of units, a petition will not be considered timely if filed within twelve (12) months after the certification on consolidation of units has been issued: *Provided, however,* That after an agreement has been signed and dated for a claimed consolidated unit, the provisions of paragraphs (c) and (d) of this section shall apply.

(i) Agreements which go into effect automatically pursuant to 5 U.S.C. 7114(c) and which do not contain the date on which the agreement became effective shall not constitute a bar to an election petition.

(j) (1) A petition filed pursuant to § 2422.2 (a) and (b) seeking an election in any existing exclusively recognized unit covered by a pending petition to consolidate existing exclusively recognized units must be filed timely in accordance with the requirements set forth in this section. Such petition filed pursuant to § 2422.2 (a) and (b) will be held in abeyance pending the processing of the petition to consolidate.

(2) Upon the issuance of a certification on consolidation of units, the petitioner under § 2422.2 (a) and (b) shall be given thirty (30) days from the issuance of the certification to submit a sufficient showing of interest in such consolidated unit. Upon the timely submission of such adequate showing of interest, petitions filed pursuant to § 2422.2 (a) and (b) will be processed, and an appropriate certification will issue.

(k) A petitioner who withdraws a petition after the issuance of a notice of hearing or after the approval of an agreement for an election, shall be barred from filing another petition for the same unit or any subdivision thereof for six (6) months, unless a withdrawal request has been received by the Regional Director not later than three (3) days before the date of the hearing.

(l) The time limits set forth in this section shall not apply to a petition for consolidation of units (except as provided in paragraphs (g) and (h) of this section), a petition for clarification of unit or for amendment of recognition or certification, or to a petition for dues allotment.

§ 2422.4 Investigation of petition and posting of notice of petition; action by Regional Director.

(a) Upon the request of the Regional Director, after the filing of a petition, the activity shall post copies of a notice to all employees in places where notices are normally posted affecting the employees in the unit involved in the proceeding.

(b) Such notice shall set forth:

(1) The name of the petitioner;

(2) The description of the unit involved;

(3) If appropriate, the proposed clarification of unit or the proposed amendment of recognition or certification; and

(4) A statement that all interested parties are to advise the Regional Director in writing of their interest and position within ten (10) days after the date of posting of such notice: *Provided, however,* That the notice in a petition for determination of eligibility for dues allotment shall contain the information required in paragraphs (1), (2), and (4) of this paragraph (a).

(c) The notice shall remain posted for a period of ten (10) days. The notice shall be posted conspicuously and shall not be covered by other material, altered or defaced.

(d) The activity shall furnish the Regional Director and all known interested parties with the following:

(1) Names, addresses and telephone numbers of all labor organizations known to represent any of the employees in the claimed unit;

(2) A copy of all relevant correspondence;

(3) A copy of existing or recently expired agreement(s) covering any of the employees described in the petition;

(4) A current alphabetized list of employees included in the unit described in the petition, together with their job classifications; and

(5) A current alphabetized list of employees described in the petition as excluded from the unit, together with their job classifications.

(e) The parties are expected to meet as soon as possible after the expiration of the ten (10) day posting period of the notice of petition as provided in paragraph (a) of this section and use their best efforts to secure agreement on an appropriate unit, including, where appropriate, consulting with higher authority within the agency and the labor organizations involved.

(f) The Regional Director shall make such investigation as the Regional Director deems necessary and thereafter shall take action which may consist of the following, as appropriate:

(1) Approve an ageement for consent election in an agreed-upon appropriate unit as provided under § 2422.7;

(2) Approve a withdrawal request;

(3) Issue a Decision and Order dismissing the petition;

(4) Issue a notice of hearing; or

(5) Issue a Decision and Order where the Regional Director determines, based upon a stipulation by the parties, that no material issue of fact exists.

(g) In processing a petition for clarification of unit or for amendment of recognition or certification, or dues allotment, where appropriate, the Regional Director shall issue and serve a Decision and Order upon all parties to the proceedings which shall be final: *Provided, however,* That an application for review of the Regional Director's Decision and Order may be filed with the Authority in accordance with the procedure set forth in § 2422.17. If no application for review is filed, or if one is filed and denied, or if the Authority does not undertake to grant review of the action within sixty (60) days after the filing of an application for review, the Regional Director shall take such action as may be appropriate, which may include issuing a clarification of unit, an amendment of recognition or certification, or a determination of eligibility for dues allotment.

(h) A determination by the Regional Director to issue a notice of hearing shall not be subject to the filing of an application for review with the Authority.

[45 FR 3498, Jan. 17, 1980, as amended at 48 FR 40190, Sept. 6, 1983]

§ 2422.5 Intervention.

(a) No labor organization will be permitted to intervene in any proceeding involving a petition filed pursuant to § 2422.2 (a) or (b) unless it has submitted to the Regional Director a showing of interest of ten percent (10%) or more of the employees in the unit specified in the petition together with an alphabetical list of names constituting such showing, or has submitted a current or recently expired agreement with the activity covering any of the employees involved, or has submitted evidence that it is the currently recognized or certified exclusive representative of any of the employees involved: *Provided, however,* That an incumbent exclusive representative shall be deemed to be an intervenor in the proceeding unless it serves on the Regional Director a written disclaimer of any representation interest for the employees in the unit sought: *Provided, further,* That any such incumbent exclusive representative that declines to sign an agreement for consent election because of a disagreement on the matters contained in § 2422.7(c) as decided by the Regional Director, or fails to appear at a hearing held pursuant to § 2422.9, shall be denied its status as an intervenor.

(b) A labor organization seeking exclusive recognition in a unit different from the unit initially petitioned for, and which includes any or all of the employees in that unit, must file a petition with the Regional Director in accordance with § 2422.2 (a) and (e) within ten (10) days after the date of posting of the notice of the initial petition as provided under § 2422.4(a), unless good cause is shown for extending the period.

(c) No labor organization may participate to any extent in any representation proceeding unless it has notified the Regional Director in writing, accompanied by its showing of interest as specified in paragraph (a) of this section, of its desire to intervene within ten (10) days after the initial date of posting of the notice of petition as provided in § 2422.4(a), unless good cause is shown for extending the period. A copy of the request for intervention filed with the Regional Director, excluding the showing of interest, shall be served on all known interested parties, and a written statement of such service should be filed with the Regional Director: *Provided, however,* That an incumbent exclusive representative shall be deemed to be an intervenor in the proceeding in accordance with paragraph (a) of this section.

(d) Any labor organization seeking to intervene in a proceeding involving a petition for determination of eligibility for dues allotment filed pursuant to § 2422.2(d) may intervene solely on the basis it claims to be the exclusive representative of some or all the employees specified in the petition and shall submit to the Regional Director a current or recently expired agreement with the activity covering any of the employees involved, or evidence that it is the currently recognized or certified exclusive representative of any of the employees involved.

(e) Any labor organization seeking to intervene must submit to the Regional Director a statement that it has submitted to the activity or agency and to the Assistant Secretary a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

(f) The Regional Director may grant intervention to a labor organization in a proceeding involving a petition for clarification of unit or a petition for amendment of recognition or certification filed pursuant to § 2422.2(c), or a petition for determination of eligibility for dues allotment filed pursuant to § 2422.2(d), or a petition to consolidate existing exclusively recognized units filed pursuant to § 2422.2(h) based on a showing that the proposed clarification, amendment, dues allotment or consolidation affects that labor organization's existing exclusively recognized unit(s) in that it would cover one or more employees who are included in such unit(s).

§ 2422.6 Withdrawal, dismissal or deferral of petitions; consolidation of cases; denial of intervention.

(a) If the Regional Director determines, after such investigation as the Regional Director deems necessary, that the petition has not been timely filed, or the claimed unit is not appropriate, or the petitioner has not made a sufficient showing of interest, or the petition is not otherwise actionable, or an intervention is not appropriate, the Regional Director may request the petitioner or intervenor to withdraw the petition or the request for intervention. In the absence of such withdrawal within a reasonable period of time, the Regional Director may issue a Decision and Order dismissing the petition or denying the request for intervention.

(b) If the Regional Director determines, after investigation, that a valid issue has been raised by a challenge under § 2422.2 (f) or (g), the Regional Director may take action which may consist of the following, as appropriate:

(1) Request the petitioner or intervenor to withdraw the petition or the request for intervention;

(2) Issue a Decision and Order dismissing the petition and/or denying the request for intervention if a withdrawal request is not submitted within a reasonable period of time;

(3) Defer action on the petition or request for intervention until such time as issues raised by the challenges

have been resolved pursuant to this part; or

(4) Consolidate such issues with the representation matter for resolution of all issues.

(c) If the Regional Director issues a Decision and Order dismissing the petition and/or denying the request for intervention, such Decision and Order shall be served on the petitioner, the party requesting intervention, the activity and other intervenors, as appropriate. Such a Regional Director's Decision and Order shall be final: *Provided, however,* That an application for review of the Regional Director's Decision and Order may be filed with the Authority in accordance with the procedure set forth in § 2422.17.

[48 FR 40191, Sept. 6, 1983]

§ 2422.7 Agreement for consent election.

(a) All parties desiring to participate in an election being conducted pursuant to this section or § 2422.16, including intervenors who have met the requirements of § 2422.5, must sign an agreement providing for such an election on a form prescribed by the Authority. An original and one (1) copy of the agreement shall be filed with the Regional Director.

(b) An agency, activity, or petitioner, and any intervenors who have complied with the requirements set forth in § 2422.5 may agree that a secret ballot election shall be conducted among the employees in the agreed-upon appropriate unit to determine whether the employees desire to be represented for purposes of exclusive recognition by any or none of the labor organizations involved.

(c) The parties shall agree on the eligibility period for participation in the election, the date(s), hour(s), and place(s) of the election, the designations on the ballot and other related election procedures.

(d) In the event that the parties cannot agree on the matters contained in paragraph (c) of this section, the Regional Director, acting on behalf of the Authority, shall decide these matters without prejudice to the right of a party to file objections to the procedural conduct of the election under § 2422.21(b).

(e) If the Regional Director approves the agreement, the election shall be conducted by the activity or agency, as appropriate, under the supervision of the Regional Director, in accordance with § 2422.18.

(f) Any qualified intervenor who refuses to sign an agreement for an election may express his objections to the agreement in writing to the Regional Director. The Regional Director, after careful consideration of such objections, may approve the agreement or take such other action as the Regional Director deems appropriate.

(g) As part of the consent election agreement, the parties may waive their right to file an application for review of a Regional Director's Decision and Order which may issue on objections and/or determinative challenged ballots.

[45 FR 3498, Jan. 17, 1980, as amended at 48 FR 40191, Sept. 6, 1983]

§ 2422.8 Notice of hearing; contents; attachments; procedures.

(a) The Regional Director may cause a notice of hearing to be issued involving the appropriateness of unit(s) or other matters related to the petition.

(b) The notice of hearing shall be served on all interested parties and shall include:

(1) The name of the activity or agency, petitioner, and intervenors, if any;

(2) A statement of the time and place of the hearing, which shall be not less than ten (10) days after service of the notice of hearing, except in extraordinary circumstances;

(3) A statement of the nature of the hearing; and

(4) A statement of the authority and jurisdiction under which the hearing is to be held.

(c) A copy of the petition shall be attached to the notice of hearing.

(d) Hearings on the appropriateness of unit(s) or other matters related to the petition pursuant to paragraph (a) of this section shall be conducted by a Hearing Officer in accordance with §§ 2422.9 through 2422.15.

§ 2422.9 Conduct of hearing.

(a) Hearings shall be conducted by a Hearing Officer and shall be open to the public unless otherwise ordered by the Hearing Officer. At any time another Hearing Officer may be substituted for the Hearing Officer previously presiding. It shall be the duty of the Hearing Officer to inquire fully into all matters in issue and the Hearing Officer shall obtain a full and complete record upon which the Authority can make an appropriate decision. An official reporter shall make the only official transcript of such proceedings. Copies of the official transcript may be examined in the appropriate regional office during normal working hours. Requests by parties for copies of transcripts should be made to the official hearing reporter.

(b) Hearings under this section are considered investigatory and not adversary. Their purpose is to develop a full and complete factual record. The rules of relevancy and materiality are paramount; there are no burdens of proof and the technical rules of evidence do not apply.

§ 2422.10 Motions.

(a) *General.* (1) A motion shall state briefly the order or relief sought and the grounds for the motion: *Provided, however,* That a motion to intervene will not be entertained by the Hearing Officer. Intervention will be permitted only to those who have met the requirements of § 2422.5.

(2) A motion prior to, and after a hearing and any response thereto, shall be made in writing. A response shall be filed within five (5) days after service of the motion. An original and two (2) copies of such motion and any response thereto shall be filed and copies shall be served on the parties and the Regional Director. A statement of such service shall be filed with the original.

(3) During a hearing a motion may be made and responded to orally on the record.

(4) The right to make motions, or to make objections to rulings on motions, shall not be deemed waived by participation in the proceeding.

(5) All motions, rulings, and orders shall become part of the record.

(b) *Filing of motions.* (1) Motions and responses thereto prior to a hearing shall be filed with the Regional Director. During the hearing motions shall be made to the Hearing Officer.

(2) After the close of the hearing, except as otherwise provided, motions and responses thereto shall be filed with the Regional Directors, *Provided,* That following the close of a hearing, motions to correct the transcript should be filed with the Hearing Officer within ten (10) days after the transcript is received in the regional office.

(3) If an application for review is filed with the Authority, all subsequent motions and responses thereto shall be filed with the Authority.

(c) *Rulings on motions.* (1) Regional Directors may rule on all motions filed with them, or they may refer them to the Hearing Officer. A Regional Director's Decision and Order granting a motion to dismiss a petition is final: *Provided, however,* That an application for review of the Regional Director's Decision and Order my be filed with the Authority in accordance with the procedure set forth in § 2422.17.

(2) Hearing Officers shall rule, either orally on the record or in writing, on all motions made at the hearing or referred to them, except that a motion to dismiss a petition shall be refered for appropriate action at such time as the record is considered by the Regional Director. Rulings by a Hearing Officer reduced to writing shall be served on the parties.

(3) The Regional Director shall consider the rulings by the Hearing Officer when the case is before the Regional Director for decision.

[45 FR 3498, Jan. 17, 1983, as amended at 48 FR 40191, Sept. 6, 1983]

§ 2422.11 Rights of the parties.

(a) A party shall have the right to appear at any hearing in person, by counsel, or by other representative, and to examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence. Two (2) copies of documentary evidence shall be submitted and a copy furnished to each of the other parties. Stipulations of fact may be introduced in evidence with respect to any issues.

(b) A party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. Such oral argument shall not preclude a party from filing a brief under § 2422.14.

§ 2422.12 Duties and powers of the Hearing Officer.

It shall be the duty of Hearing Officers to inquire fully into the facts as they relate to the matters before them. With respect to cases assigned to them between the time they are designated and the transfer of the case to the Authority, Hearing Officers shall have the authority to:

(a) Grant requests for subpenas pursuant to § 2429.7 of this subchapter;

(b) Rule upon offers of proof and receive relevant evidence and stipulations of fact;

(c) Take or cause depositions or interrogatories to be taken whenever the ends of justice would be served thereby;

(d) Limit lines of questioning or testimony which are immaterial, irrelevant or unduly repetitious;

(e) Regulate the course of the hearing and, if appropriate, exclude from the hearing persons who engage in misconduct;

(f) Strike all related testimony of witnesses refusing to answer any questions ruled to be proper;

(g) Hold conferences for the settlement or simplification of the issues by consent of the parties or upon the Hearing Officer's own motion;

(h) Dispose of procedural requests, motions, or similar matters, which shall be made part of the record of the proceedings, including motions referred to the Hearing Officer by the Regional Director and motions to amend petitions;

(i) Call and examine and cross-examine witnesses and introduce into the record documentary or other evidence;

(j) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(k) Continue the hearing from day-to-day, or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;

(l) Rule on motions to correct the transcript which are received within ten (10) days after the transcript is received in the regional office; and

(m) Take any other action necessary under this section and not prohibited by the regulations in this subchapter.

§ 2422.13 Objections to conduct of hearing.

Any objection to the introduction of evidence may be stated orally or in writing and shall be accompanied by a short statement of the grounds of such objections, and be included in the record. No such objection shall be deemed waived by further participation in the hearing. Automatic exceptions will be allowed to all adverse rulings.

§ 2422.14 Filing of briefs.

A party desiring to file a brief with the Regional Director shall file the original and one (1) copy within thirty (30) days from the close of the hearing. Copies thereof shall be served on all other other parties to the proceeding. Requests for extensions of time pursuant to § 2429.23(a) to file briefs shall be submitted to the Regional Director, in writing, and copies thereof shall be served on the other parties and a statement of such service shall be filed with the Regional Director. Requests for extensions of time shall be in writing and received by the Regional Director not later than five (5) days before the date such briefs are due. No reply brief may be filed in any proceeding except by special permission of the Regional Director.

[48 FR 40191, Sept. 6, 1983]

§ 2422.15 Contents of record.

The record of the proceeding shall include the petition, notice of hearing, service sheet, motions, rulings, orders, official transcript of the hearing with any corrections thereto, stipulations, objections, depositions, interrogatories, exhibits, documentary evidence, and any briefs or other documents submitted by the parties.

[48 FR 40191, Sept. 6, 1983]

§ 2422.16 Decision and Order of the Regional Director.

(a) Upon the close of the hearing, or based upon a stipulation by the parties where the Regional Director has determined that no material issue of fact exists, the Regional Director shall issue a Decision and Order determining the appropriate unit, directing an election or dismissing the petition, or making other disposition of the matters before the Regional Director. The Regional Director's Decision and Order shall be final: *Provided, however,* That an application for review of the Regional Director's Decision and Order may be filed with the Authority in accordance with the procedure set forth in § 2422.17.

(b) The filing of an application for review shall not, unless specifically ordered by the Authority, operate as a stay of the election or any other action taken by the Regional Director.

[48 FR 40192, Sept. 6, 1983]

§ 2422.17 Application for review of a Decision and Order of the Regional Director.

(a) A Regional Director's Decision and Order shall be final: *Provided, however,* That a party may file an application for review of the Regional Director's Decision and Order with the Authority within sixty (60) days of the date of such action. Copies of the application for review shall be served on the Regional Director and all other parties, and a statement of service shall be filed with the application for review. The sixty (60) day time limit provided for in 5 U.S.C. 7105(f) for the filing of an application for review may not be extended or waived.

(b) Any application for review must be a self-contained document enabling the Authority to rule on the basis of its contents without the necessity of recourse to the record; however, the Authority may, in its discretion, examine the record in evaluating the application. An application must contain a summary of all evidence or rulings relating to the issue(s) raised together with page citations from the transcript, if applicable, and supporting argument. An application may not raise any issue or allege any facts not timely presented to the Regional Director.

(c) The Authority may grant an application for review only where it appears that compelling reasons exist therefor. Accordingly, an application for review may be granted only upon one or more of the following grounds:

(1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, Authority precedent;

(2) That there are extraordinary circumstances warranting reconsideration of an Authority policy;

(3) That the conduct of the hearing held or any ruling made in connection with the proceeding has resulted in prejudicial error; or

(4) That the Regional Director's decision on a substantial factual issue is clearly erroneous and such error prejudicially affects the rights of a party.

(d) Any party may file an opposition to an application for review with the Authority within ten (10) days after service of the application for review. Copies of the opposition to the application for review shall be served on the Regional Director and the other parties, and a statement of service shall be filed with the opposition to the application for review. The Authority may deny the application for review without awaiting a statement in opposition thereto.

(e) The parties may, at any time, waive the right to file an application for review. Failure to file an application for review shall preclude such parties from relitigating, in any related subsequent unfair labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding. The denial of an application for review by the Authority, the failure of the Authority to undertake to grant review of a Regional Director's Decision and Order within sixty (60) days after the date of the filing of the application, or the granting of review and affirming by the Authority of the Regional Director's Decision and Order shall preclude relitigating any such issue in any related subsequent unfair labor practice proceeding.

(f) A Decision and Order of a Regional Director becomes the action of the Authority when:

(1) No application for review is filed within sixty (60) days after the date of the Regional Director's Decision and Order; or

(2) A timely application for review is filed with the Authority and the Authority does not undertake to grant review of the Regional Director's Decision and Order within sixty (60) days after the date of the filing of the application; or

(3) The Authority denies an application for review of the Regional Director's Decision and Order.

(g) The Authority may rule upon the issue(s) in its order granting the application for review. The granting of an application for review shall not stay the Regional Director's Decision and Order unless otherwise ordered by the Authority. Except where the Authority rules upon the issue(s) in the order granting review, the parties may, within ten (10) days after issuance of an order granting review, file briefs with the Authority. Such briefs may be reproductions of those previously filed with the Regional Director and/or other briefs shall be limited to the issue(s) raised in the application for review. Where review has been granted, the Authority will consider the entire record in the light of the grounds relied upon for review. Any application for review may be withdrawn with the permission of the Authority at any time prior to the issuance of the decision of the Authority thereon. Upon granting review of a timely application, the Authority may issue a decision or ruling affirming, modifying or reversing any action reviewed.

[48 FR 40192, Sept. 6, 1983]

§ 2422.18 Election procedure; request for authorized representation election observers.

This section governs all elections conducted under the supervision of the Regional Director pursuant to § 2422.7 or § 2422.16. The Regional Director may conduct elections in unusual circumstances in accordance with terms and conditions set forth in the notice of election.

(a) Appropriate notices of election shall be posted by the activity. Such notices shall set forth the details and procedures for the election, the appropriate unit, the eligibility period, the date(s), hour(s) and place(s) of the election and shall contain a sample ballot.

(b) The reproduction of any document purporting to be a copy of the official ballot, other than one completely unaltered in form and content and clearly marked "sample" on its face, which suggests either directly or indirectly to employees that the Authority endorses a particular choice, may constitute grounds for setting aside an election upon objections properly filed.

(c) All elections shall be by secret ballot. An exclusive representative shall be chosen by a majority of the valid ballots cast. The results of an election to consolidate existing exclusively recognized units shall be determined by a majority of the valid ballots cast in the proposed consolidated unit.

(d) Whenever two or more labor organizations are included as choices in an election, any intervening labor organization may request the Regional Director to remove its name from the ballot. The request must be in writing and received not later than seven (7) days before the date of the election. Such request shall be subject to the approval of the Regional Director whose decision shall be final.

(e) In a proceeding involving an election to determine if a labor organization should cease to be the exclusive representative filed by an agency or any employee or employees or an individual acting on behalf of any employee(s) under § 2422.2(b), an organization currently recognized or certified may not have its name removed from the ballot without having served the written request submitted pursuant to paragraph (d) of this section on all parties. Such request shall contain an express disclaimer of any representation interest among the employees in the unit.

(f) Any party may be represented at the polling place(s) by observers of its own selection, subject to such limitations as the Regional Director may prescribe.

(g) A party's request to the Regional Director for named observers shall be in writing and filed with the Regional Director not less than fifteen (15) days prior to an election to be supervised or conducted pursuant to this part. The request shall name and identify the authorized representation election observers sought, and state the reasons therefor. Copies thereof shall be served on the other parties and a written statement of such service shall be filed with the Regional Director. Within five (5) days after service of a copy of the request, a party may file objections to the request with the Regional Director and state the reasons therefor. Copies thereof shall be served on the other parties and a written statement of such service shall be filed with the Regional Director. The Regional Director shall rule upon the request not later than five (5) days prior to the date of the election. However, for good cause shown by a party, or on the Regional Director's own motion, the Regional Director may vary the time limits prescribed in this paragraph. The Regional Director's ruling is not subject to the filing of an application for review with the Authority.

[45 FR 3498, Jan. 17, 1980. Redesignated and amended at 48 FR 40192, Sept. 6, 1983]

§ 2422.19 Challenged ballots.

Any party or the representative of the Authority may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded.

[45 FR 3498, Jan. 17, 1980. Redesignated at 48 FR 40193, Sept. 6, 1983]

§ 2422.20 Tally of ballots.

Upon the conclusion of the election, the Regional Director shall cause to be furnished to the parties a tally of ballots.

[45 FR 3498, Jan. 17, 1980. Redesignated at 48 FR 40193, Sept. 6, 1983]

§ 2422.21 Certification; objections to election; determination on objections and challenged ballots.

(a) The Regional Director shall issue to the parties a certification of results of the election or a certification of representative, where appropriate: *Provided, however,* That no objections are filed within the time limit set forth below; the challenged ballots are insufficient in number to affect the results of the election; and no runoff or rerun election is to be held.

(b) Within five (5) days after the tally of ballots has been furnished, a party may file objections to the procedural conduct of the election, or to conduct which may have improperly affected the results of the election, setting forth a clear and concise statement of the reasons therefor. The objecting party shall bear the burden of proof at all stages of the proceeding regarding all matters raised in its objections. An original and two (2) copies of the objections shall be filed with the Regional Director and copies shall be served on the parties. A statement of such service shall be filed with the Regional Director. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Within ten (10) days after the filing of the objections, unless an extension of time has been granted by the Regional Director, the objecting party shall file with the Regional Director evidence, including signed statements, documents and other material supporting the objections.

(c) If objections are filed or challenged ballots are sufficient in number to affect the results of the election, the Regional Director shall investigate the objections or challenged ballots, or both.

(d) When the Regional Director determines that no relevant question of fact exists, the Regional Director:

(1) Shall find whether improper conduct occurred of such a nature as to warrant the setting aside of the election, and/or

(2) Shall rule on determinative challenged ballots, if any. The Regional Director shall issue a Decision and Order on objections and/or determina-

tive challenged ballots which shall be served upon all parties to the proceeding. Such Decision and Order shall contain therein any additional matter such as an Order to rerun the election or count ballots at a specified date, time, and place, and if appropriate, that the Regional Director will cause to be issued a revised tally of ballots.

(e) The Regional Director's Decision and Order shall be final: *Provided however,* That an application for review of the Regional Director's Decision and Order may be filed with the Authority in accordance with the procedure set forth in § 2422.17. *Provided, however,* That a determination by a Regional Director to issue a notice of hearing shall not be subject to the filing of an application for review.

(f) Any party filing an application for review of the Regional Director's Decision and Order when no hearing is conducted may support its submission to the Authority by appending thereto copies of documentary evidence, including copies of any affidavits, it had timely submitted to the Regional Director. Documentary evidence so appended shall thereupon become part of the record in the proceeding. Failure to timely submit such documentary evidence to the Regional Director, or to append that evidence to its submission to the Authority in the representation proceedings as provided above, shall preclude a party from relying on such evidence in any subsequent unfair labor practice proceeding.

(g) Where it appears to the Regional Director that the objections or determinative challenged ballots raise any relevant question of fact which may have affected the results of the election, the Regional Director shall cause to be issued a notice of hearing. Hearings shall be conducted by a Hearing Officer in accordance with §§ 2422.9 through 2422.15 and after the close of the hearing a Decision and Order shall be issued by the Regional Director in accordance with § 2422.16. *Provided, however,* That in any proceeding wherein a representation case has been consolidated with an unfair labor practice case for purposes of hearing, such a consolidated hearing shall be conducted and decisions issued by Administrative Law Judges and exceptions and related submissions shall be filed with the Authority in accordance with §§ 2423.14 through 2423.28 of this subchapter. *Provided, however,* That with regard to the representation case:

(1) Sections 2423.18 and 2423.19(j) will not be applicable;

(2) The Administrative Law Judge may not recommend remedial action to be taken or notices to be posted, as provided under § 2423.26(a); and

(3) Reference to "charge, complaint" in § 2423.26(b) shall be omitted.

(h) At a hearing conducted pursuant to paragraph (g) of this section the party filing the objections shall have the burden of proving all matters alleged in its objections by a preponderance of the evidence. With respect to challenged ballots, no burden of proof is imposed on any party.

(i) Upon the close of a hearing conducted by an Administrative Law Judge pursuant to paragraph (g) of this section, the Authority shall issue a decision adopting, modifying or reversing the Administrative Law Judge's decision.

[45 FR 3498, Jan. 17, 1980. Redesignated and amended at 48 FR 40193, Sept. 6, 1983]

§ 2422.22 Runoff elections.

(a) The agency or activity may conduct a runoff election under supervision of the Regional Director when an election in which the ballot provided for not less than three (3) choices (i.e., at least two representatives and "neither" or "none") results in no choice receiving a majority of the valid ballots cast, and any objections which had been filed have been disposed of, and any challenged ballots have been disposed of or are not sufficient in number to affect the results of the election, as provided herein. Only one runoff election shall be held pursuant to this section.

(b) Employees who were eligible to vote in the original election and who also are in an eligible category on the date of the runoff election shall be eligible to vote in the runoff election.

(c) The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of votes.

[45 FR 3498, Jan. 17, 1980. Redesignated at 48 FR 40193, Sept. 6, 1983]

§ 2422.23 Inconclusive elections.

(a) An inconclusive election is one in which none of the choices on the ballot has received a majority of the valid ballots cast. If there are no challenged ballots that would affect the results of the election, the Regional Director may declare the election a nullity and may order another election providing for a selection from among the choices afforded in the previous ballot in the following situations:

(1) The ballot provided for a choice among two or more representatives and "neither" or "none," and the votes are equally divided among the several choices;

(2) The number of ballots cast for one choice in an election is equal to the number cast for another choice but less than the number cast for the third choice; or

(3) The runoff ballot provides for a choice between two representatives and the votes are equally divided.

(b) Only one further election pursuant to this section may be held.

[45 FR 3498, Jan. 17, 1980. Redesignated at 48 FR 40193, Sept. 6, 1983]

PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

Sec.

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AUTHORITY: 5 U.S.C. 7134.

SOURCE: 45 FR 3506, Jan. 17, 1980, unless otherwise noted.

§ 2423.1 Applicability of this part.

This part is applicable to any charge of alleged unfair labor practices filed with the Authority on or after January 11, 1979.

§ 2423.2 Informal proceedings.

(a) The purposes and policies of the Federal Service Labor-Management Relations Statute can best be achieved by the cooperative efforts of all persons covered by the program. To this end, it shall be the policy of the Authority and the General Counsel to encourage all persons alleging unfair labor practices and persons against whom such allegations are made to meet and, in good faith, attempt to resolve such matters prior to the filing of unfair labor practice charges with the Authority.

(b) In furtherance of the policy referred to in paragraph (a) of this section, and noting the six (6) month period of limitation set forth in 5 U.S.C. 7118(a)(4), it shall be the policy of the Authority and the General Counsel to encourage the informal resolution of unfair labor practice allegations subsequent to the filing of a charge and prior to the issuance of a complaint by the Regional Director.

(c) In order to afford the parties an opportunity to implement the policy referred to in paragraphs (a) and (b) of this section, the investigation of an unfair labor practice charge by the Regional Director will normally not commence until the parties have been afforded a reasonable amount of time, not to exceed fifteen (15) days from the filing of the charge, during which period the parties are urged to attempt to informally resolve the unfair labor practice allegation.

(5 U.S.C. 7118(a)(5) and 7134)

[45 FR 3506, Jan. 17, 1980, as amended at 48 FR 27532, June 16, 1983]

§ 2423.3 Who may file charges.

An activity, agency or labor organization may be charged by any person with having engaged in or engaging in any unfair labor practice prohibited under 5 U.S.C. 7116.

§ 2423.4 Contents of the charge; supporting evidence and documents.

(a) A charge alleging a violation of 5 U.S.C. 7116 shall be submitted on forms prescribed by the Authority and shall contain the following:

(1) The name, address and telephone number of the person(s) making the charge;

(2) The name, address and telephone number of the activity, agency, or labor organization against whom the charge is made;

(3) A clear and concise statement of the facts constituting the alleged unfair labor practice, a statement of the section(s) and subsection(s) of chapter 71 of title 5 of the United States Code alleged to have been violated, and the date and place of occurrence of the particular acts; and

(4) A statement of any other procedure invoked involving the subject matter of the charge and the results, if any, including whether the subject matter raised in the charge (i) has been raised previously in a grievance procedure; (ii) has been referred to the Federal Service Impasses Panel, the Federal Mediation and Conciliation Service, the Equal Employment Opportunity Commission, the Merit Systems Protection Board or the Special Counsel of the Merit Systems Protection Board for consideration or action; or (iii) involves a negotiability issue raised by the charging party in a petition pending before the Authority pursuant to Part 2424 of this subchapter.

(b) Such charge shall be in writing and signed and shall contain a declaration by the person signing the charge, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of that person's knowledge and belief.

(c) When filing a charge, the charging party shall submit to the Regional Director any supporting evidence and documents.

§ 2423.5 Selection of the unfair labor practice procedure or the negotiability procedure.

Where a labor organization files an unfair labor practice charge pursuant to this part which involves a negotiability issue, and the labor organization also files pursuant to Part 2424 of this subchapter a petition for review of the same negotiability issue, the Authority and the General Counsel ordinarily will not process the unfair labor practice charge and the petition for review simultaneously. Under such circumstances, the labor organization must select under which procedure to proceed. Upon selection of one procedure, further action under the other procedure will ordinarily be suspended. Such selection must be made regardless of whether the unfair labor practice charge or the petition for review of a negotiability issue is filed first. Notification of this selection must be made in writing at the time that both procedures have been invoked, and must be served on the Authority, the appropriate Regional Director and all parties to both the unfair labor practice case and the negotiability case. Cases which solely involve an agency's allegation that the duty to bargain in good faith does not extend to the matter proposed to be bargained and which do not involve actual or contemplated changes in conditions of employment may only be filed under Part 2424 of this subchapter.

§ 2423.6 Filing and service of copies.

(a) An original and four (4) copies of the charge together with one copy for each additional charged party named shall be filed with the Regional Director for the region in which the alleged unfair labor practice has occurred or is occurring. A charge alleging that an unfair labor practice has occurred or is occurring in two or more regions may be filed with the Regional Director for any such region.

(b) Upon the filing of a charge, the charging party shall be responsible for the service of a copy of the charge (without the supporting evidence and documents) upon the person(s) against whom the charge is made, and for filing a written statement of such service with the Regional Director. The Regional Director will, as a matter of course, cause a copy of such charge to be served on the person(s) against whom the charge is made, but shall not be deemed to assume responsibility for such service.

§ 2423.7 Investigation of charges.

(a) The Regional Director, on behalf of the General Counsel, shall conduct such investigation of the charge as the Regional Director deems necessary. Consistent with the policy set forth in section 2423.2, the investigation will normally not commence until the parties have been afforded a reasonable amount of time, not to exceed fifteen (15) days from the filing of the charge, to informally resolve the unfair labor practice allegation.

(b) During the course of the investigation all parties involved will have an opportunity to present their evidence and views to the Regional Director.

(c) In connection with the investigation of charges, all persons are expected to cooperate fully with the Regional Director.

(d) The purposes and policies of the Federal Service Labor-Management Relations Statute can best be achieved by the full cooperation of all parties involved and the voluntary submission of all potentially relevant information from all potential sources during the course of the investigation. To this end, it shall be the policy of the Authority and the General Counsel to protect the identity of individuals and the substance of the statements and information they submit or which is obtained during the investigation as a means of assuring the Authority's and the General Counsel's continuing ability to obtain all relevant information.

(5 U.S.C. 7118(a)(5) and 7134)

[45 FR 3506, Jan. 17, 1980, as amended at 48 FR 27532, June 16, 1983]

§ 2423.8 Amendment of charges.

Prior to the issuance of a complaint, the charging party may amend the charge in accordance with the requirements set forth in § 2423.6.

§ 2423.9 Action by the Regional Director.

(a) The Regional Director shall take action which may consist of the following, as appropriate:

(1) Approve a request to withdraw a charge;

(2) Refuse to issue a complaint;

(3) Approve a written settlement agreement in accordance with the provisions of § 2423.11;

(4) Issue a complaint;

(5) Upon agreement of all parties, transfer to the Authority for decision, after issuance of a complaint, a stipulation of facts in accordance with the provisions of § 2429.1(a) of this subchapter; or

(6) Withdraw a complaint.

(b) Parties may request the General Counsel to seek appropriate temporary relief (including a restraining order) under 5 U.S.C. 7123(d). The General Counsel will initiate and prosecute injunctive proceedings under 5 U.S.C. 7123(d) only upon approval of the Authority. A determination by the General Counsel not to seek approval of the Authority for such temporary relief is final and may not be appealed to the Authority.

(c) Upon a determination to issue a complaint, whenever it is deemed advisable by the Authority to seek appropriate temporary relief (including a restraining order) under 5 U.S.C. 7123(d), the Regional Attorney or other designated agent of the Authority to whom the matter has been referred will make application for appropriate temporary relief (including a restraining order) in the district court of the United States within which the unfair labor practice is alleged to have occurred or in which the party sought to be enjoined resides or transacts business. Such temporary relief will not be sought unless the record establishes probable cause that an unfair labor practice is being committed, or if such temporary relief will interfere with the ability of the agency to carry out its essential functions.

(d) Whenever temporary relief has been obtained pursuant to 5 U.S.C. 7123(d) and thereafter the Administrative Law Judge hearing the complaint, upon which the determination to seek such temporary relief was predicated, recommends dismissal of such complaint, in whole or in part, the Regional Attorney or other designated agent of the Authority handling the case for the Authority shall inform the district court which granted the temporary relief of the possible change in circumstances arising out of the decision of the Administrative Law Judge.

§ 2423.10 Determination not to issue complaint; review of action by the Regional Director.

(a) If the Regional Director determines that the charge has not been timely filed, that the charge fails to state an unfair labor practice, or for other appropriate reasons, the Regional Director may request the charging party to withdraw the charge, and in the absence of such withdrawal within a reasonable time, decline to issue a complaint.

(b) If the Regional Director determines not to issue a complaint on a charge which is not withdrawn, the Regional Director shall provide the parties with a written statement of the reasons for not issuing a complaint.

(c) The charging party may obtain a review of the Regional Director's decision not to issue a complaint by filing an appeal with the General Counsel within twenty-five (25) days after service of the Regional Director's decision. The appeal shall contain a complete statement setting forth the facts and reasons upon which it is based. A copy of the appeal shall also be filed with the Regional Director. In addition, the charging party should notify all other parties of the fact that an appeal has been taken, but any failure to give such notice shall not affect the validity of the appeal.

(d) A request for extension of time to file an appeal shall be in writing and received by the General Counsel not later than five (5) days before the date the appeal is due. The charging party should notify the Regional Director and all other parties that it has requested an extention of time in which to file an appeal, but any failure to give such notice shall not affect the validity of its request for an extension of time to file an appeal.

(e) The General Counsel may sustain the Regional Director's refusal to issue or re-issue a complaint, stating the grounds of affirmance, or may direct the Regional Director to take further action. The General Counsel's decision shall be served on all the parties. The decision of the General Counsel shall be final.

§ 2423.11 Settlement or adjustment of issues.

General settlement policy

(a) At any stage of a proceeding prior to hearing, where time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity to submit to the Regional Director with whom the charge was filed, for consideration, all facts and arguments concerning offers of settlement, or proposals of adjustment.

Precompliant informal settlements

(b) (1) Prior to the issuance of any complaint or the taking of other formal action, the Regional Director will afford the charging party and the respondent a reasonable period of time in which to enter into an informal settlement agreement to be approved by the Regional Director. Upon approval by the Regional Director and compliance with the terms of the informal settlement agreement, no further action shall be taken in the case. If the respondent fails to perform its obligations under the informal settlement agreement, the Regional Director may determine to institute further proceedings.

(2) In the event that the charging party fails or refuses to become a party to an informal settlement agree-

ment offered by the respondent, if the Regional Director concludes that the offered settlement will effectuate the policies of the Federal Service Labor-Management Relations Statute, the agreement shall be between the respondent and the Regional Director and the latter shall decline to issue a complaint. The charging party may obtain a review of the Regional Director's action by filing an appeal with the General Counsel in accordance with § 2423.10(c). The General Counsel shall take action on such appeal as set forth in § 2423.10(e).

Post complaint settlement policy

(c) Consistent with the policy reflected in paragraph (a) of this section, even after the issuance of a complaint, the Authority favors the settlement of issues. Such settlements may be either informal or formal. Informal settlement agreements shall be accomplished as provided in paragraph (b) of this section. Formal settlement agreements are subject to the approval of the Authority. In such formal settlement agreements, the parties shall agree to waive their right to a hearing and agree further that the Authority may issue an order requiring the respondent to take action appropriate to the terms of the settlement. Ordinarily the formal settlement agreement also contains the respondent's consent to the Authority's application for the entry of a decree by the appropriate federal court enforcing the Authority's order.

Post complaint—prehearing formal settlements

(d) (1) If, after issuance of a complaint but before opening of the hearing, the charging party and the respondent enter into a formal settlement agreement, and such agreement is accepted by the Regional Director, the formal settlement agreement shall be submitted to the Authority for approval.

(2) If, after issuance of a complaint but before opening of the hearing, the charging party fails or refuses to become a party to a formal settlement agreement offered by the respondent, and the Regional Director concludes that the offered settlement will effectuate the policies of the Federal Service Labor-Management Relations Statute, the agreement shall be between the respondent and the Regional Director. The charging party will be so informed and provided a brief written statement by the Regional Director of the reasons therefor. The formal settlement agreement together with the charging party's objections, if any, and the Regional Director's written statements, shall be submitted to the Authority for approval. The Authority may approve or disapprove any formal settlement agreement or return the case to the Regional Director for other appropriate action.

Post complaint—prehearing informal settlements

(3) After the issuance of a complaint but before opening of the hearing, if the Regional Director concludes that it will effectuate the policies of the Federal Service Labor-Management Relations Statute, the Regional Director may withdraw the complaint and approve an informal settlement agreement pursuant to paragraph (b) of this section.

Informal settlements after the opening of the hearing

(e) (1) After issuance of a complaint and after opening of the hearing, if the Regional Director concludes that it will effectuate the policies of the Federal Service Labor-Management Relations Statute, the Regional Director may request the Administrative Law Judge for permission to withdraw the complaint and, having been granted such permission to withdraw the complaint, may approve an informal settlement pursuant to paragraph (b) of this section.

Formal settlements after the opening of the hearing

(2) If, after issuance of a complaint and after opening of the hearing, the parties enter into a formal settlement agreement, the Regional Director may request the Administrative Law Judge to approve such formal settlement agreement, and upon such approval, to transmit the agreement to the Authority for approval.

(3) If the charging party fails or refuses to become a party to a formal settlement agreement offered by the respondent, and the Regional Director concludes that the offered settlement will effectuate the policies of the Federal Service Labor-Management Relations Statute, the agreement shall be between the respondent and the Regional Director. After the charging party is given an opportunity to state on the record or in writing the reasons for opposing the formal settlement, the Regional Director may request the Administrative Law Judge to approve such formal settlement agreement, and upon such approval, to transmit the agreement to the Authority for approval. The Authority may approve or disapprove any formal settlement agreement or return the case to the Administrative Law Judge for other appropriate action.

§ 2423.12 Issuance and contents of the complaint.

(a) After a charge is filed, if it appears to the Regional Director that formal proceedings in respect thereto should be instituted, the Regional Director shall issue and cause to be served on all other parties a formal complaint: *Provided, however,* That a determination by a Regional Director to issue a complaint shall not be subject to review.

(b) The complaint shall include:

(1) Notice of the charge;

(2) Notice that a hearing will be held before an Administrative Law Judge;

(3) Notice of the time and place fixed for the hearing which shall not be earlier than five (5) days after service of the complaint;

(4) A statement of the nature of the hearing;

(5) A clear and concise statement of the facts upon which assertion of jurisdiction by the Authority is predicated;

(6) A reference to the particular sections of chapter 71 of title 5 of the United States Code and the rules and regulations involved; and

(7) A clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed.

(c) The Chief Administrative Law Judge may, upon such judge's own motion or upon proper cause shown by any other party, extend the date of the hearing or may change the place at which it is to be held.

(d) A complaint may be amended, upon such terms as may be deemed just, prior to the hearing, by the Regional Director issuing the complaint; at the hearing and until the case has been transmitted to the Authority pursuant to § 2423.26, upon motion by the Administrative Law Judge designated to conduct the hearing; and after the case has been transmitted to the Authority pursuant to § 2423.26, upon motion by the Authority at any time prior to the issuance of an order based thereon by the Authority.

(e) Any such complaint may be withdrawn before the hearing by the Regional Director.

§ 2423.13 Answer to the complaint; extension of time for filing; amendment.

(a) Except in extraordinary circumstances as determined by the Regional Director, within twenty (20) days after the complaint is served upon the respondent, the respondent shall file the original and four (4) copies of the answer thereto, signed by the respondent or its representative, with the Regional Director who issued the complaint. The respondent shall serve a copy of the answer on the Chief Administrative Law Judge and on all other parties.

(b) *The answer:* (1) Shall specifically admit, deny, or explain each of the allegations of the complaint unless the respondent is without knowledge, in which case the answer shall so state; or (2) Shall state that the respondent admits all of the allegations in the complaint. Failure to file an answer or to plead specifically to or explain any allegation shall constitute an admission of such allegation and shall be so found by the Authority, unless good cause to the contrary is shown.

(c) Upon the Regional Director's own motion or upon proper cause shown by any other party, the Regional Director issuing the complaint may by written order extend the time within which the answer shall be filed.

(d) The answer may be amended by the respondent at any time prior to the hearing. During the hearing or subsequent thereto, the answer may be amended in any case where the complaint has been amended, within such period as may be fixed by the Administrative Law Judge or the Authority. Whether or not the complaint has been amended, the answer may, in the discretion of the Administrative Law Judge or the Authority, upon motion, be amended upon such terms and within such periods as may be fixed by the Administrative Law Judge or the Authority.

§ 2423.14 Conduct of hearing.

(a) Hearings shall be conducted not earlier than five (5) days after the date on which the complaint is served. The hearing shall be open to the public unless otherwise ordered by the Administrative Law Judge. A substitute Administrative Law Judge may be designated at any time to take the place of the Administrative Law Judge previously designated to conduct the hearing. Such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of title 5 of the United States Code, except that the parties shall not be bound by the rules of evidence, whether statutory, common law, or adopted by a court.

(b) An official reporter shall make the only official transcript of such proceedings. Copies of the official transcript may be examined in the appropriate regional office during normal working hours. Requests by parties for copies of transcripts should be made to the official hearing reporter.

§ 2423.15 Intervention.

Any person involved and desiring to intervene in any proceeding pursuant to this part shall file a motion in accordance with the procedures set forth in § 2423.22. The motion shall state the grounds upon which such person claims involvement.

§ 2423.16 Rights of parties.

A party shall have the right to appear at any hearing in person, by counsel, or by other representative, and to examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, and to submit rebuttal evidence, except that the participation of any party shall be limited to the extent prescribed by the Administrative Law Judge. Two (2) copies of documentary evidence shall be submitted and a copy furnished to each of the other parties. Stipulations of fact may be introduced in evidence with respect to any issue.

§ 2423.17 Rules of evidence.

The parties shall not be bound by the rules of evidence, whether statutory, common law, or adopted by court. Any evidence may be received, except that an Administrative Law Judge may exclude any evidence which is immaterial, irrelevant, unduly repetitious or customarily privileged.

§ 2423.18 Burden of proof before the Administrative Law Judge.

The General Counsel shall have the responsibility of presenting the evidence in support of the complaint and shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.

§ 2423.19 Duties and powers of the Administrative Law Judge.

It shall be the duty of the Administrative Law Judge to inquire fully into the facts as they relate to the matter before such judge. Subject to the rules and regulations of the Authority and the General Counsel, an Administrative Law Judge presiding at a hearing may:

(a) Grant requests for subpenas pursuant to § 2429.7 of this subchapter;

(b) Rule upon petitions to revoke subpenas pursuant to § 2429.7 of this subchapter;

(c) Administer oaths and affirmations;

(d) Take or order the taking of a deposition whenever the ends of justice would be served thereby;

(e) Order responses to written interrogatories whenever the ends of justice would be served thereby unless it would interfere with the Authority's and the General Counsel's policy of protecting the personal privacy and confidentiality of sources of information as set forth in § 2423.7(d);

(f) Call, examine and cross-examine witnesses and introduce into the record documentary or other evidence;

(g) Rule upon offers of proof and receive relevant evidence and stipulations of fact with respect to any issue;

(h) Limit lines of questioning or testimony which are immaterial, irrelevant, unduly repetitious, or customarily privileged;

(i) Regulate the course of the hearing and, if appropriate, exclude from the hearing persons who engage in contemptuous conduct and strike all related testimony of witnesses refusing to answer any questions ruled to be proper;

(j) Hold conferences for the settlement or simplification of the issues by consent of the parties or upon the judge's own motion;

(k) Dispose of procedural requests, motions, or similar matters, including motions referred to the Administrative Law Judge by the Regional Director and motions for summary judgment or to amend pleadings; dismiss complaints or portions thereof; order hearings reopened; and, upon motion, order proceedings consolidated or severed prior to issuance of the Administrative Law Judge's decision;

(l) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(m) Continue the hearing from day-to-day or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;

(n) Prepare, serve and transmit the decision pursuant to § 2423.26;

(o) Take official notice of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice: *Provided, however,* That the parties shall be given adequate notice, at the hearing or by reference in the Administrative Law Judge's decision of the matters so noticed, and shall be given adequate opportunity to show the contrary;

(p) Approve requests for withdrawal of complaints based on informal settlements occurring after the opening of the hearing pursuant to § 2423.11(e)(1), and transmit formal settlement agreements to the Authority for approval pursuant to § 2423.11(e)(2) and (3);

(q) Grant or deny requests made at the hearing to intervene and to present testimony;

(r) Correct or approve proposed corrections of the official transcript when deemed necessary;

(s) Sequester witnesses where appropriate; and

(t) Take any other action deemed necessary under the foregoing and not prohibited by the regulations in this subchapter.

§ 2423.20 Unavailability of Administrative Law Judges.

In the event the Administrative Law Judge designated to conduct the hearing becomes unavailable, the Chief Administrative Law Judge shall designate another Administrative Law Judge for the purpose of further hearing or issuance of a decision on the record as made, or both.

§ 2423.21 Objection to conduct of hearing.

(a) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing accompanied by a short statement of the grounds for such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing. Such objection shall not stay the conduct of the hearing.

(b) Formal exceptions to adverse rulings are unnecessary. Automatic exceptions will be allowed to all adverse rulings. Except by special permission of the Authority, and in view of § 2429.11 of this subchapter, rulings by the Administrative Law Judge shall not be appealed prior to the transmittal of the case to the Authority, but shall be considered by the Authority only upon the filing of exceptions to the Administrative Law Judge's decision in accordance with § 2423.27. In the discretion of the Administrative Law Judge, the hearing may be continued or adjourned pending any such request for special permission to appeal.

§ 2423.22 Motions.

(a) *Filing of Motions.* (1) Motions made prior to a hearing and any response thereto shall be made in writing and filed with the Regional Director: *Provided, however,* That after the issuance of a complaint by the Regional Director any motion to change the date of the hearing shall be filed with the Chief Administrative Law Judge immediately upon discovery of the circumstance which in the judgment of the moving party warrants a change in the date of the hearing. The moving party shall attempt to contact the other parties and shall inform the Chief Administrative Law Judge of the positions of the other parties on the motion. Only in extraordinary circumstances will such a motion be granted where filed less than ten (10) days prior to the scheduled hearing. Motions made after the hearing opens and prior to the transmittal of the case to the Authority shall be made in writing to the Administrative Law Judge or orally on the record. After the transmittal of the case to the Authority, motions and any response thereto shall be filed in writing with the Authority: *Provided, however,* That a motion to correct the transcript shall be filed with the Administrative Law Judge.

(2) A response to a motion shall be filed within five (5) days after service of the motion, unless otherwise directed.

(3) An original and two (2) copies of the motions and responses shall be filed, and copies shall be served on the parties. A statement of such service shall accompany the original.

(b) *Rulings on motions.* (1) Regional Directors may rule on all motions filed with them before the hearing, or they may refer them to the Chief Administrative Law Judge.

(2) Except by special permission of the Authority, and in view of § 2429.11 of this subchapter, rulings by the Regional Director shall not be appealed prior to the transmittal of the case to the Authority, but shall be considered by the Authority when the case is transmitted to it for decision.

(3) Administrative Law Judges may rule on motions referred to them prior to the hearing and on motions filed after the beginning of the hearing and before the transmittal of the case to the Authority. Such motions may be ruled upon by the Chief Administrative Law Judge in the absence of an Administrative Law Judge.

(4) Except by special permission of the Authority, and in view of § 2429.11 of this subchapter, rulings by Administrative Law Judges shall not be appealed prior to the transmittal of the case to the Authority, but shall be considered by the Authority when the case is transmitted to it for decision. In the discretion of the Administrative Law Judge, the hearing may be continued or adjourned pending any such request for special permission to appeal.

[45 FR 3506, Jan. 17, 1980, as amended at 46 FR 40674, Aug. 11, 1981]

§ 2423.23 Waiver of objections.

Any objection not made before an Administrative Law Judge shall be deemed waived.

§ 2423.24 Oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing.

§ 2423.25 Filing of briefs.

Any party desiring to submit a brief to the Administrative Law Judge shall file the original and four (4) copies within a reasonable time fixed by the Administrative Law Judge, but not in excess of thirty (30) days from the close of the hearing. Copies of any brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the Administrative Law Judge. Requests for extensions of time pursuant to § 2429.23(a) to file briefs shall be made to the Chief Administrative Law Judge, in writing, and copies thereof shall be served on the other parties. A statement of such service shall be furnished. Requests for extensions of time must be received not later than five (5) days before the date such briefs are due. No reply brief may be filed except by special permission of the Administrative Law Judge.

[46 FR 40674, Aug. 11, 1981]

§ 2423.26 Transmittal of the Administrative Law Judge's decision to the Authority; exceptions.

(a) After the close of the hearing, and the receipt of briefs, if any, the Administrative Law Judge shall prepare the decision expeditiously. The Administrative Law Judge shall prepare a decision even when the parties enter into a stipulation of fact at the hearing. The decision shall contain findings of fact, conclusions of law, and the reasons or basis therefore, including any necessary credibility determinations, and conclusions as to the disposition of the case including, where appropriate, the remedial action to be taken and notices to be posted.

(b) The Administrative Law Judge shall cause the decision to be served promptly on all parties to the proceeding. Thereafter, the Administrative Law Judge shall transmit the case to the Authority including the judge's decision and the record. The record shall include the charge, complaint, service sheet, answer, motions, rulings, orders, official transcript of the hearing, stipulations, objections, depositions, interrogatories, exhibits, documentary evidence and any briefs or other documents submitted by the parties.

(c) An original and four (4) copies of any exception to the Administrative Law Judge's decision and briefs in support of exceptions may be filed by any party with the Authority within twenty-five (25) days after service of the decision: *Provided, however,* That the Authority may for good cause shown extend the time for filing such exceptions. Requests for extensions of time pursuant to § 2429.23(a) to file exceptions must be received by the Authority not later than five (5) days before the date the exceptions are due. Copies of such exceptions and any supporting briefs shall be served on all other parties, and a statement of such service shall be furnished to the Authority.

[45 FR 3506, Jan. 17, 1980, as amended at 46 FR 40674, Aug. 11, 1981]

§ 2423.27 Contents of exceptions to the Administrative Law Judge's decision.

(a) Exceptions to an Administrative Law Judge's decision shall:

(1) Set forth specifically the questions upon which exceptions are taken;

(2) Identify that part of the Administrative Law Judge's decision to which objection is made; and

(3) Designate by precise citation of page the portions of the record relied on, state the grounds for the exceptions, and include the citation of authorities unless set forth in a supporting brief.

(b) Any exception to ruling, finding or conclusion which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.

§ 2423.28 Briefs in support of exceptions; oppositions to exceptions; cross-exceptions.

(a) Any brief in support of exceptions shall contain only matters included within the scope of the exceptions and shall contain, in the order indicated, the following:

(1) A concise statement of the case containing all that is material to the consideration of the questions presented;

(2) A specification of the questions involved and to be argued; and

(3) The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the transcript and the legal or other material relied on.

(b) Any party may file an opposition to exceptions, and/or cross-exceptions, and a supporting brief with the Authority within ten (10) days after service of any exceptions to an Administrative Law Judge's decision. Copies of any opposition and/or cross-exceptions and of any supporting briefs shall be served on all other parties, and a statement of such service shall be submitted with the documents filed with the Authority.

[45 FR 3506, Jan. 17, 1980, as amended at 46 FR 40674, Aug. 11, 1981]

§ 2423.29 Action by the Authority.

(a) After considering the Administrative Law Judge's decision, the record, and any exceptions and related submissions filed, the Authority shall issue its decision affirming or reversing the Administrative Law Judge, in whole, or in part, or making such other disposition of the matter as it deems appropriate: *Provided, however,* That in the absence of exceptions filed timely and in accordance with § 2423.27, the findings, conclusions, and recommendations in the decision of the Administrative Law Judge shall, without precedential significance, become the findings, conclusions, decision and order of the Authority, and all objections and exceptions thereto shall be deemed waived for all purposes.

(b) Upon finding a violation, the Authority shall issue an order:

(1) To cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

(2) Requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Authority and requiring that the agreement, as amended, be given retroactive effect;

(3) Requiring reinstatement of an employee with backpay in accordance with 5 U.S.C. 5596; or

(4) Including any combination of the actions described in paragraphs (1) through (3) of this paragraph (b), or such other action as will carry out the purpose of the Federal Service Labor-Management Relations Statute.

(c) Upon finding no violation, the Authority shall dismiss the complaint.

[45 FR 3506, Jan. 17, 1980, as amended at 46 FR 40674, Aug. 11, 1981]

§ 2423.30 Compliance with decisions and orders of the Authority.

When remedial action is ordered, the respondent shall report to the appropriate Regional Director within a specified period that the required remedial action has been effected. When the General Counsel finds that the required remedial action has not been effected, the General Counsel shall take such action as may be appropriate, including referral to the Authority for enforcement.

§ 2423.31 Backpay proceedings.

After the entry of an Authority order directing payment of backpay, or the entry of a court decree enforcing such order, if it appears to the Regional Director that a controversy exists between the Authority and a respondent which cannot be resolved without a formal proceeding, the Regional Director may issue and serve on all parties a backpay specification accompanied by a notice of hearing or a notice of hearing without a specification. The respondent shall, within twenty (20) days after the service of a backpay specification accompanied by a notice of hearing, file an answer thereto in accordance with § 2423.13 with the Regional Director issuing such specification. No answer need be filed by the respondent to a notice of hearing issued without a specification. After the issuance of a notice of hearing, with or without a backpay specification, the procedures provided in §§ 2423.14 to 2423.29, inclusive, shall be followed insofar as applicable.

PART 2424—EXPEDITED REVIEW OF NEGOTIABILITY ISSUES

Subpart A—Instituting an Appeal

Sec.

2424.1 Conditions governing review.
2424.2 Who may file a petition.
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2424.10 Authority decision and order; compliance.

Sec.

Subpart B—Criteria for Determining Compelling Need for Agency Rules and Regulations

2424.11 Illustrative criteria.

AUTHORITY: 5 U.S.C. 7134.

SOURCE: 45 FR 3511, Jan. 17, 1980, unless otherwise noted.

Subpart A—Instituting an Appeal

§ 2424.1 Conditions governing review.

The Authority will consider a negotiability issue under the conditions prescribed by 5 U.S.C. 7117 (b) and (c), namely: If an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter proposed to be bargained because, as proposed, the matter is inconsistent with law, rule or regulation, the exclusive representative may appeal the allegation to the Authority when—

(a) It disagrees with the agency's allegation that the matter as proposed to be bargained is inconsistent with any Federal law or any Government-wide rule or regulation; or

(b) It alleges, with regard to any agency rule or regulation asserted by the agency as a bar to negotiations on the matter, as proposed, that:

(1) The rule or regulation violates applicable law, or rule or regulation of appropriate authority outside the agency;

(2) The rule or regulation was not issued by the agency or by any primary national subdivision of the agency, or otherwise is not applicable to bar negotiations with the exclusive representative, under 5 U.S.C. 7117(a)(3); or

(3) No compelling need exists for the rule or regulation to bar negotiations on the matter, as proposed, because the rule or regulation does not meet the criteria established in Subpart B of this part.

§ 2424.2 Who may file a petition.

A petition for review of a negotiability issue may be filed by an exclusive representative which is a party to the negotiations.

§ 2424.3 Time limits for filing.

The time limit for filing a petition for review is fifteen (15) days after the date the agency's allegation that the duty to bargain in good faith does not extend to the matter proposed to be bargained is served on the exclusive representative. The exclusive representative shall request such allegation in writing and the agency shall make the allegation in writing and serve a copy on the exclusive representative: *Provided, however,* That review of a negotiability issue may be requested by an exclusive representative under this subpart without a prior written allegation by the agency if the agency has not served such allegation upon the exclusive representative within ten (10) days after the date of the receipt by any agency bargaining representative at the negotiations of a written request for such allegation.

§ 2424.4 Content of petition; service.

(a) A petition for review shall be dated and shall contain the following:

(1) A statement setting forth the express language of the proposal sought to be negotiated as submitted to the agency;

(2) An explicit statement of the meaning attributed to the proposal by the exclusive representative;

(3) A copy of all pertinent material, including the agency's allegation in writing that the matter, as proposed, is not within the duty to bargain in good faith, and other relevant documentary material; and

(4) Notification by the petitioning labor organization whether the negotiability issue is also involved in an unfair labor practice charge filed by such labor organization under Part 2423 of this subchapter and pending before the General Counsel.

(b) A copy of the petition including all attachments thereto shall be served on the agency head and on the principal agency bargaining representative at the negotiations.

[45 FR 3511, Jan. 17, 1980, as amended at 46 FR 40674, Aug. 11, 1981]

§ 2424.5 Selection of the unfair labor practice procedure or the negotiability procedure.

Where a labor organization files an unfair labor practice charge pursuant to Part 2423 of this subchapter which involves a negotiability issue, and the labor organization also files pursuant to this part a petition for review of the same negotiability issue, the Authority and the General Counsel ordinarily will not process the unfair labor practice charge and the petition for review simultaneously. Under such circumstances, the labor organization must select under which procedure to proceed. Upon selection of one procedure, further action under the other procedure will ordinarily be suspended. Such selection must be made regardless of whether the unfair labor practice charge or the petition for review of a negotiability issue is filed first. Notification of this selection must be made in writing at the time that both procedures have been invoked, and must be served on the Authority, the appropriate Regional Director and all parties to both the unfair labor practice case and the negotiability case. Cases which solely involve an agency's allegation that the duty to bargain in good faith does not extend to the matter proposed to be bargained and which do not involve actual or contemplated changes in conditions of employment may only be filed under this part.

§ 2424.6 Position of the agency; time limits for filing; service.

(a) Within thirty (30) days after the date of the receipt by the head of an agency of a copy of a petition for review of a negotiability issue the agency shall file a statement—

(1) Withdrawing the allegation that the duty to bargain in good faith does not extend to the matter proposed to be negotiated; or

(2) Setting forth in full its position on any matters relevant to the petition which it wishes the Authority to consider in reaching its decision, including a full and detailed statement of its reasons supporting the allegation. The statement shall cite the section of any law, rule or regulation relied upon as a basis for the allegation and shall contain a copy of any internal agency rule or regulation so relied upon.

(b) A copy of the agency's statement of position, including all attachments thereto shall be served on the exclusive representative.

[45 FR 3511, Jan. 17, 1980; 45 FR 8933, Feb. 11, 1980]

§ 2424.7 Response of the exclusive representative; time limits for filing; service.

(a) Within fifteen (15) days after the date of the receipt by an exclusive representative of a copy of an agency's statement of position the exclusive representative shall file a full and detailed response stating its position and reasons for:

(1) Disagreeing with the agency's allegation that the matter, as proposed to be negotiated, is inconsistent with any Federal law or Government-wide rule or regulation; or

(2) Alleging that the agency's rules or regulations violate applicable law, or rule or regulation or appropriate authority outside the agency; that the rules or regulations were not issued by the agency or by any primary national subdivision of the agency, or otherwise are not applicable to bar negotiations under 5 U.S.C. 7117(a)(3); or that no compelling need exists for the rules or regulations to bar negotiations.

(b) The response shall cite the particular section of any law, rule or regulation alleged to be violated by the agency's rules or regulations; or shall explain the grounds for contending the agency rules or regulations are not applicable to bar negotiations under 5 U.S.C. 7117(a)(3), or fail to meet the criteria established in Subpart B of this part or were not issued at the agency headquarters level or at the level of a primary national subdivision.

(c) A copy of the response of the exclusive representative including all attachments thereto shall be served on the agency head and on the agency's representative of record in the proceeding before the Authority.

[45 FR 3511, Jan. 17, 1980; 45 FR 8933, Feb. 11, 1980]

§ 2424.8 Additional submissions to the Authority.

The Authority will not consider any submission filed by any party, whether supplemental or responsive in nature, other than those authorized under §§ 2424.2 through 2424.7 unless such submission is requested by the Authority; or unless, upon written request by any party, a copy of which is served on all other parties, the Authority in its discretion grants permission to file such submission.

§ 2424.9 Hearing.

A hearing may be held, in the discretion of the Authority, before a determination is made under 5 U.S.C. 7117(b) or (c). If a hearing is held, it shall be expedited to the extent practicable and shall not include the General Counsel as a party.

§ 2424.10 Authority decision and order; compliance.

(a) Subject to the requirements of this subpart the Authority shall expedite proceedings under this part to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefor at the earliest practicable date.

(b) If the Authority finds that the duty to bargain extends to the matter proposed to be bargained, the decision of the Authority shall include an order that the agency shall upon request (or as otherwise agreed to by the parties) bargain concerning such matter. If the Authority finds that the duty to bargain does not extend to the matter proposed to be negotiated, the Authority shall so state and issue an order dismissing the petition for review of the negotiability issue. If the Authority finds that the duty to bargain extends to the matter proposed to be bargained only at the election of the agency, the Authority shall so state and issue an order dismissing the petition for review of the negotiability issue.

(c) When an order is issued as provided in paragraph (b) of this section, the agency or exclusive representative shall report to the appropriate Regional Director within a specified period failure to comply with an order that the agency shall upon request (or as otherwise agreed to by the parties) bargain concerning the disputed matter. If the Authority finds such a failure to comply with its order, the Authority shall take whatever action it deems necessary, including enforcement under 5 U.S.C. 7123(b).

[45 FR 48576, July 21, 1980; 45 FR 49905, July 28, 1980; 46 FR 12191, Feb. 13, 1981]

Subpart B—Criteria for Determining Compelling Need for Agency Rules and Regulations

§ 2424.11 Illustrative criteria.

A compelling need exists for an agency rule or regulation concerning any condition of employment when the agency demonstrates that the rule or regulation meets one or more of the following illustrative criteria:

(a) The rule or regulation is essential, as distinguished from helpful or desirable, to the accomplishment of the mission or the execution of functions of the agency or primary national subdivision in a manner which is consistent with the requirements of an effective and efficient government.

(b) The rule or regulation is necessary to insure the maintenance of basic merit principles.

(c) The rule or regulation implements a mandate to the agency or primary national subdivision under law or other outside authority, which implementation is essentially nondiscretionary in nature.

PART 2425—REVIEW OF ARBITRATION AWARDS

Sec.
2425.1 Who may file an exception; time limits for filing; opposition; service.
2425.2 Content of exception.
2425.3 Grounds for review.
2425.4 Authority decision.

AUTHORITY: 5 U.S.C. 7134.

SOURCE: 45 FR 3513, Jan. 17, 1980, unless otherwise noted.

§ 2425.1 Who may file an exception; time limits for filing; opposition; service.

(a) Either party to arbitration under the provisions of chapter 71 of title 5 of the United States Code may file an exception to an arbitrator's award rendered pursuant to the arbitration.

(b) The time limit for filing an exception to an arbitration award is thirty (30) days beginning on the date the award is served on the filing party.

(c) An opposition to the exception may be filed by a party within thirty (30) days after the date of service of the exception.

(d) A copy of the exception and any opposition shall be served on the other party.

[45 FR 3513, Jan. 17, 1980, as amended at 46 FR 40675, Aug. 11, 1981; 49 FR 22623, May 31, 1984]

§ 2425.2 Content of exception.

An exception must be a dated, self-contained document which sets forth in full:

(a) A statement of the grounds on which review is requested;

(b) Evidence or rulings bearing on the issues before the Authority;

(c) Arguments in support of the stated grounds, together with specific reference to the pertinent documents and citations of authorities; and

(d) A legible copy of the award of the arbitrator and legible copies of other pertinent documents.

§ 2425.3 Grounds for review.

(a) The Authority will review an arbitrator's award to which an exception has been filed to determine if the award is deficient—

(1) Because it is contrary to any law, rule or regulation; or

(2) On other grounds similar to those applied by Federal courts in private sector labor-management relations.

(b) The Authority will not consider an exception with respect to an award relating to:

(1) An action based on unacceptable performance covered under 5 U.S.C. 4303;

(2) A removal, suspension for more than fourteen (14) days, reduction in grade, reduction in pay, or furlough of thirty (30) days or less covered under 5 U.S.C. 7512; or

(3) Matters similar to those covered under 5 U.S.C. 4303 and 5 U.S.C. 7512 which arise under other personnel systems.

§ 2425.4 Authority decision.

The Authority shall issue its decision and order taking such action and making such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

PART 2426—NATIONAL CONSULTATION RIGHTS AND CONSULTATION RIGHTS ON GOVERNMENT-WIDE RULES OR REGULATIONS

Subpart A—National Consultation Rights

Sec.
2426.1 Requesting; granting; criteria.
2426.2 Requests; petition and procedures for determination of eligibility for national consultation rights.
2426.3 Obligation to consult.

Subpart B—Consultation Rights on Government-wide Rules or Regulations

2426.11 Requesting; granting; criteria.
2426.12 Requests; petition and procedures for determination of eligibility for consultation rights on Government-wide rules or regulations.
2426.13 Obligation to consult.

AUTHORITY: 5 U.S.C. 7134.

SOURCE: 45 FR 3513, Jan. 17, 1980, unless otherwise noted.

Subpart A—National Consultation Rights

§ 2426.1 Requesting; granting; criteria.

(a) An agency shall accord national consultation rights to a labor organization that:

(1) Requests national consultation rights at the agency level; and

(2) Holds exclusive recognition for either:

(i) Ten percent (10%) or more of the total number of civilian personnel employed by the agency and the non-appropriated fund Federal instrumentalities under its jurisdiction, excluding foreign nationals; or

(ii) 3,500 or more employees of the agency.

(b) An agency's primary national subdivision which has authority to formulate conditions of employment shall accord national consultation rights to a labor organization that:

(1) Requests national consultation rights at the primary national subdivision level; and

(2) Holds exclusive recognition for either:

(i) Ten percent (10%) or more of the total number of civilian personnel employed by the primary national subdivision and the non-appropriated fund Federal instrumentalities under its jurisdiction, excluding foreign nationals; or

(ii) 3,500 or more employees of the primary national subdivision.

(c) In determining whether a labor organization meets the requirements as prescribed in paragraphs (a)(2) and (b)(2) of this section, the following will not be counted:

(1) At the agency level, employees represented by the labor organization under national exclusive recognition granted at the agency level.

(2) At the primary national subdivision level, employees represented by the labor organization under national exclusive recognition granted at the agency level or at that primary national subdivision level.

(d) An agency or a primary national subdivision of an agency shall not grant national consultation rights to any labor organization that does not meet the criteria prescribed in paragraphs (a), (b) and (c) of this section.

§ 2426.2 Requests; petition and procedures for determination of eligibility for national consultation rights.

(a) Requests by labor organizations for national consultation rights shall be submitted in writing to the headquarters of the agency or the agency's primary national subdivision, as appropriate, which headquarters shall have fifteen (15) days from the date of service of such request to respond thereto in writing.

(b) Issues relating to a labor organization's eligibility for, or continuation of, national consultation rights shall be referred to the Authority for determination as follows:

(1) A petition for determination of the eligibility of a labor organization for national consultation rights under criteria set forth in § 2426.1 may be filed by a labor organization.

(2) A petition for determination of eligibility for national consultation rights shall be submitted on a form prescribed by the Authority and shall set forth the following information:

(i) Name and affiliation, if any, of the petitioner and its address and telephone number;

(ii) A statement that the petitioner has submitted to the agency or the primary national subdivision and to the Assistant Secretary a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives;

(iii) A declaration by the person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of such person's knowledge and belief;

(iv) The signature of the petitioner's representative, including such person's title and telephone number;

(v) The name, address, and telephone number of the agency or primary national subdivision in which the petitioner seeks to obtain or retain national consultation rights, and the persons to contact and their titles, if known;

(vi) A showing that petitioner holds adequate exclusive recognition as required by § 2426.1; and

(vii) A statement as appropriate: (A) That such showing has been made to and rejected by the agency or primary national subdivision, together with a statement of the reasons for rejection, if any, offered by that agency or primary national subdivision;

(B) That the agency or primary national subdivision has served notice of its intent to terminate existing national consultation rights, together with a statement of the reasons for termination; or

(C) That the agency or primary national subdivision has failed to respond in writing to a request for national consultation rights made under § 2426.2(a) within fifteen (15) days after the date the request is served on the agency or primary national subdivision.

(3) The following regulations govern petitions filed under this section:

(i) A petition for determination of eligibility for national consultation rights shall be filed with the Regional Director for the region wherein the headquarters of the agency or the agency's primary national subdivision is located.

(ii) An original and four (4) copies of a petition shall be filed, together with a statement of any other relevant facts and of all correspondence.

(iii) Copies of the petition together with the attachments referred to in paragraph (b)(3)(ii) of this section shall be served by the petitioner on all known interested parties, and a written statement of such service shall be filed with the Regional Director.

(iv) A petition shall be filed within thirty (30) days after the service of written notice by the agency or primary national subdivision of its refusal to accord national consultation rights pursuant to a request under § 2426.2(a) or its intention to terminate existing national consultation rights. If an agency or a primary national subdivision fails to respond in writing to a request for national consultation rights made under § 2426.2(a) within fifteen (15) days after the date the request is served on the agency or primary national subdivision, a petition shall be filed within thirty (30) days after the expiration of such fifteen (15) day period.

(v) If an agency or primary national subdivision wishes to terminate national consultation rights, notice of its intention to do so shall include a statement of its reasons and shall be served not less than thirty (30) days prior to the intended termination date. A labor organization, after receiving such notice, may file a petition within the time period prescribed herein, and thereby cause to be stayed further action by the agency or primary national subdivision pending disposition of the petition. If no petition has been filed within the provided time period, an agency or primary national subdivision may terminate national consultation rights.

(vi) Within fifteen (15) days after the receipt of a copy of the petition, the agency or primary national subdivision shall file a response thereto with the Regional Director raising any matter which is relevant to the petition.

(vii) The Regional Director shall make such investigations as the Regional Director deems necessary and thereafter shall issue and serve on the parties a Decision and Order with respect to the eligibility for national consultation rights which shall be final: *Provided, however,* That an application for review of the Regional Director's Decision and Order may be filed with the Authority in accordance with the procedure set forth in § 2422.17 of this subchapter. A determination by the Regional Director to issue a notice of hearing shall not be subject to the filing of an application for review. The Regional Director, if appropriate, may cause a notice of hearing to be issued to all interested parties where substantial factual issues exist warranting a hearing. Hearings shall be conducted by a Hearing Officer in accordance with §§ 2422.9 through 2422.15 of this subchapter and after the close of the hearing a Decision and Order shall be issued by the Regional Director in accordnce with § 2422.16 of this subchapter.

[45 FR 3513, Jan. 17, 1980, as amended at 48 FR 40193, Sept. 6, 1983]

§ 2426.3 Obligation to consult.

(a) When a labor organization has been accorded national consultation rights, the agency or the primary national subdivision which has granted those rights shall, through appropriate officials, furnish designated representatives of the labor organization:

(1) Reasonable notice of any proposed substantive change in conditions of employment; and

(2) Reasonable time to present its views and recommendations regarding the change.

(b) If a labor organization presents any views or recommendations regarding any proposed substantive change in conditions of employment to an agency or a primary national subdivision, that agency or primary national subdivision shall:

(1) Consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(2) Provide the labor organization a written statement of the reasons for taking the final action.

(c) Nothing in this subpart shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

Subpart B—Consultation Rights on Government-wide Rules or Regulations

§ 2426.11 Requesting; granting; criteria.

(a) An agency shall accord consultation rights on Government-wide rules or regulations to a labor organization that:

(1) Requests consultation rights on Government-wide rules or regulations from an agency; and

(2) Holds exclusive recognition for 3,500 or more employees.

(b) An agency shall not grant consultation rights on Government-wide rules or regulations to any labor organization that does not meet the criteria prescribed in paragraph (a) of this section.

§ 2426.12 Requests; petition and procedures for determination of eligibility for consultation rights on Government-wide rules or regulations.

(a) Requests by labor organizations for consultation rights on Government-wide rules or regulations shall be submitted in writing to the headquarters of the agency, which headquarters shall have fifteen (15) days from the date of service of such request to respond thereto in writing.

(b) Issues relating to a labor organization's eligibility for, or continuation of, consultation rights on Government-wide rules or regulations shall be referred to the Authority for determination as follows:

(1) A petition for determination of the eligibility of a labor organization for consultation rights under criteria set forth in § 2426.11 may be filed by a labor organization.

(2) A petition for determination of eligibility for consultation rights shall be submitted on a form prescribed by the Authority and shall set forth the following information:

(i) Name and affiliation, if any, of the petitioner and its address and telephone number;

(ii) A statement that the petitioner has submitted to the agency and to the Assistant Secretary a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives;

(iii) A declaration by the person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of such person's knowledge and belief;

(iv) The signature of the petitioner's representative, including such person's title and telephone number;

(v) The name, address, and telephone number of the agency in which the petitioner seeks to obtain or retain consultation rights on Government-wide rules or regulations, and the persons to contact and their titles, if known;

(vi) A showing that petitioner meets the criteria as required by § 2426.11; and

(vii) A statement, as appropriate:

(A) That such showing has been made to and rejected by the agency, together with a statement of the reasons for rejection, if any, offered by that agency;

(B) That the agency has served notice of its intent to terminate existing consultation rights on Government-wide rules or regulations, together with a statement of the reasons for termination; or

(C) That the agency has failed to respond in writing to a request for consultation rights on Government-wide rules or regulations made under § 2426.12(a) within fifteen (15) days after the date the request is served on the agency.

(3) The following regulations govern petitions filed under this section:

(i) A petition for determination of eligibility for consultation rights on Government-wide rules or regulations shall be filed with the Regional Director for the region wherein the headquarters of the agency is located.

(ii) An original and four (4) copies of a petition shall be filed, together with a statement of any other relevant facts and of all correspondence.

(iii) Copies of the petition together with the attachments referred to in paragraph (b)(3)(ii) of this section shall be served by the petitioner on the agency, and a written statement of such service shall be filed with the Regional Director.

(iv) A petition shall be filed within thirty (30) days after the service of written notice by the agency of its refusal to accord consultation rights on Government-wide rules or regulations pursuant to a request under § 2426.12(a) or its intention to terminate such existing consultation rights. If an agency fails to respond in writing to a request for consultation rights on Government-wide rules or regulations made under § 2426.12(a) within fifteen (15) days after the date the request is served on the agency, a petition shall be filed within thirty (30) days after the expiration of such fifteen (15) day period.

(v) If an agency wishes to terminate consultation rights on Government-wide rules or regulations, notice of its intention to do so shall be served not less than thirty (30) days prior to the intended termination date. A labor organization, after receiving such notice, may file a petition within the time period prescribed herein, and thereby cause to be stayed further action by the agency pending disposition of the petition. If no petition has been filed within the provided time period, an agency may terminate such consultation rights.

(vi) Within fifteen (15) days after the receipt of a copy of the petition, the agency shall file a response thereto with the Regional Director raising any matter which is relevant to the petition.

(vii) The Regional Director shall make such investigation as the Regional Director deems necessary and thereafter shall issue and serve on the parties a Decision and Order with respect to the eligibility for consultation rights which shall be final: *Provided, however,* That an application for review of the Regional Director's Decision and Order may be filed with the Authority in accordance with the procedure set forth in § 2422.17 of this subchapter. A determination by the Regional Director to issue a notice of hearing shall not be subject to the filing of an application for review. The Regional Director, if appropriate, may cause a notice of hearing to be issued where substantial factual issues exist warranting a hearing. Hearings shall be conducted by a Hearing Officer in accordance with §§ 2422.9 through 2422.15 of this chapter and after the close of the hearing a Decision and Order shall be issued by the Regional Director in accordance with § 2422.16 of this subchapter.

[45 FR 3513, Jan. 17, 1980, as amended at 48 FR 40193, Sept. 6, 1983]

§ 2426.13 Obligation to consult.

(a) When a labor organization has been accorded consultation rights on Government-wide rules or regulations, the agency which has granted those rights shall, through appropriate officials, furnish designated representatives of the labor organization:

(1) Reasonable notice of any proposed Government-wide rule or regulation issued by the agency affecting any substantive change in any condition of employment; and

(2) Reasonable time to present its views and recommendations regarding the change.

(b) If a labor organization presents any views or recommendations regarding any proposed substantive change in any condition of employment to an agency, that agency shall:

(1) Consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(2) Provide the labor organization a written statement of the reasons for taking the final action.

PART 2427—GENERAL STATEMENTS OF POLICY OR GUIDANCE

Sec.

2427.1 Scope.
2427.2 Requests for general statements of policy or guidance.
2427.3 Content of request.
2427.4 Submissions from interested parties.
2427.5 Standards governing issuance of general statements of policy or guidance.

AUTHORITY: 5 U.S.C. 7134.

SOURCE: 45 FR 3516, Jan. 17, 1980, unless otherwise noted.

§ 2427.1 Scope.

This part sets forth procedures under which requests may be submitted to the Authority seeking the issuance of general statements of policy or guidance under 5 U.S.C. 7105(a)(1).

§ 2427.2 Requests for general statements of policy or guidance.

(a) The head of an agency (or designee), the national president of a labor organization (or designee), or the president of a labor organization not affiliated with a national organization (or designee) may separately or jointly ask the Authority for a general statement of policy or guidance. The head of any lawful association not qualified as a labor organization may also ask the Authority for such a statement provided the request is not in conflict with the provisions of chapter 71 of title 5 of the United States Code or other law.

(b) The Authority ordinarily will not consider a request related to any matter pending before the Authority, General Counsel, Panel or Assistant Secretary.

§ 2427.3 Content of request.

(a) A request for a general statement of policy or guidance shall be in writing and must contain:

(1) A concise statement of the question with respect to which a general statement of policy or guidance is requested together with background information necessary to an understanding of the question;

(2) A statement of the standards under § 2427.5 upon which the request is based;

(3) A full and detailed statement of the position or positions of the requesting party or parties;

(4) Identification of any cases or other proceedings known to bear on the question which are pending under chapter 71 of title 5 of the United States Code; and

(5) Identification of other known interested parties.

(b) A copy of each document also shall be served on all known interested parties, including the General Counsel, the Panel, the Federal Mediation and Conciliation Service, and the Assistant Secretary, where appropriate.

§ 2427.4 Submissions from interested parties.

Prior to issuance of a general statement of policy or guidance the Authority, as it deems appropriate, will afford an opportunity to interested parties to express their views orally or in writing.

§ 2427.5 Standards governing issuance of general statements of policy or guidance.

In deciding whether to issue a general statement of policy or guidance, the Authority shall consider:

(a) Whether the question presented can more appropriately be resolved by other means;

(b) Where other means are available, whether an Authority statement would prevent the proliferation of cases involving the same or similar question;

(c) Whether the resolution of the question presented would have general applicability under the Federal Service Labor-Management Relations Statute;

(d) Whether the question currently confronts parties in the context of a labor-management relationship;

(e) Whether the question is presented jointly by the parties involved; and

(f) Whether the issuance by the Authority of a general statement of policy or guidance on the question would promote constructive and cooperative labor-management relationships in the Federal service and would otherwise promote the purposes of the Federal Service Labor-Management Relations Statute.

PART 2428—ENFORCEMENT OF ASSISTANT SECRETARY STANDARDS OF CONDUCT DECISIONS AND ORDERS

Sec.
2428.1 Scope.
2428.2 Petitions for enforcement.
2428.3 Authority decision.

AUTHORITY: 5 U.S.C. 7134.

SOURCE: 45 FR 3516, Jan. 17, 1980, unless otherwise noted.

§ 2428.1 Scope.

This part sets forth procedures under which the Authority, pursuant to 5 U.S.C. 7105(a)(2)(I), will enforce decisions and orders of the Assistant Secretary in standards of conduct matters arising under 5 U.S.C. 7120.

§ 2428.2 Petitions for enforcement.

(a) The Assistant Secretary may petition the Authority to enforce any Assistant Secretary decision and order in a standards of conduct case arising under 5 U.S.C. 7120. The Assistant Secretary shall transfer to the Authority the record in the case, including a copy of the transcript if any, exhibits, briefs, and other documents filed with the Assistant Secretary. A copy of the petition for enforcement shall be served on the labor organization against which such order applies.

(b) An opposition to Authority enforcement of any such Assistant Secretary decision and order may be filed by the labor organization against which such order applies twenty (20) days from the date of service of the petition, unless the Authority, upon good cause shown by the Assistant Secretary, sets a shorter time for filing such opposition. A copy of the opposition to enforcement shall be served on the Assistant Secretary.

§ 2428.3 Authority decision.

(a) A decision and order of the Assistant Secretary shall be enforced unless it is arbitrary and capricious or based upon manifest disregard of the law.

(b) The Authority shall issue its decision on the case enforcing, enforcing as modified, refusing to enforce, or remanding the decision and order of the Assistant Secretary.

PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

Subpart A—Miscellaneous

Sec.
2429.1 Transfer of cases to the Authority.
2429.2 Transfer and consolidation of cases.
2429.3 Transfer of record.
2429.4 Referral of policy questions to the Authority.
2429.5 Matters not previously presented; official notice.
2429.6 Oral argument.
2429.7 Subpenas.
2429.8 Stay of arbitration award; requests.
2429.9 Amicus curiae.
2429.10 Advisory opinions.
2429.11 Interlocutory appeals.
2429.12 Service of process and papers by the Authority.
2429.13 Official time.
2429.14 Witness fees.
2429.15 Authority requests for advisory opinions.
2429.16 General remedial authority.
2429.17 Reconsideration.

Subpart B—General Requirements

2429.21 Computation of time for filing papers.
2429.22 Additional time after service by mail.
2429.23 Extension; waiver.
2429.24 Place and method of filing; acknowledgement.
2429.25 Number of copies and paper size.
2429.26 Other documents.
2429.27 Service; statement of service.
2429.28 Petitions for amendment of regulations.

AUTHORITY: 5 U.S.C. 7134.

SOURCE: 45 FR 3516, Jan. 17, 1980, unless otherwise noted.

Subpart A—Miscellaneous

§ 2429.1 Transfer of cases to the Authority.

(a) In any unfair labor practice case under Part 2423 of this subchapter in which, after the issuance of a complaint, the Regional Director determines, based upon a stipulation by the parties, that no material issue of fact exists, the Regional Director may upon agreement of all parties transfer the case to the Authority; and the Authority may decide the case on the basis of the formal documents alone. Briefs in the case must be filed with the Authority within thirty (30) days from the date of the Regional Director's order transferring the case to the Authority. The Authority may also remand any such case to the Regional Director for further processing.

Orders of transfer and remand shall be served on all parties.

(b) In any case under Part 2423 of this subchapter in which it appears to the Regional Director that the proceedings raise questions which should be decided by the Authority, the Regional Director may, at any time, issue an order transferring the case to the Authority for decision or other appropriate action. Such an order shall be served on the parties.

[48 FR 40194, Sept. 6, 1983]

§ 2429.2 Transfer and consolidation of cases.

In any matter arising pursuant to Parts 2422 and 2423 of this subchapter, whenever it appears necessary in order to effectuate the purposes of the Federal Service Labor-Management Relations Statute or to avoid unnecessary costs or delay, Regional Directors may consolidate cases within their own region or may transfer such cases to any other region, for the purpose of investigation or consolidation with any proceedings which may have been instituted in, or transferred to, such region.

§ 2429.3 Transfer of record.

In any case under Part 2425 of this subchapter, upon request by the Authority, the parties jointly shall transfer the record in the case, including a copy of the transcript, if any, exhibits, briefs and other documents filed with the arbitrator, to the Authority.

§ 2429.4 Referral of policy questions to the Authority.

Notwithstanding the procedures set forth in this subchapter, the General Counsel, the Assistant Secretary, or the Panel may refer for review and decision or general ruling by the Authority any case involving a major policy issue that arises in a proceeding before any of them. Any such referral shall be in writing and a copy of such referral shall be served on all parties to the proceeding. Before decision or general ruling, the Authority shall obtain the views of the parties and other interested persons, orally or in writing, as it deems necessary and appropriate.

§ 2429.5 Matters not previously presented; official notice.

The Authority will not consider evidence offered by a party, or any issue, which was not presented in the proceedings before the Regional Director, Hearing Officer, Administrative Law Judge, or arbitrator. The Authority may, however, take official notice of such matters as would be proper.

§ 2429.6 Oral argument.

The Authority or the General Counsel, in their discretion, may request or permit oral argument in any matter arising under this subchapter under such circumstances and conditions as they deem appropriate.

§ 2429.7 Subpenas.

(a) Any member of the Authority, the General Counsel, any Administrative Law Judge appointed by the Authority under 5 U.S.C. 3105, and any Regional Director, Hearing Officer, or other employee of the Authority designated by the Authority may issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence. However, no subpena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

(b) Where the parties are in agreement that the appearance of witnesses or the production of documents is necessary, and such witnesses agree to appear, no such subpena need be sought.

(c) A request for a subpena by any person, as defined in 5 U.S.C. 7103(a)(1), shall be in writing and filed with the Regional Director, in proceedings arising under Parts 2422 and 2423 of this subchapter, or filed with the Authority, in proceedings arising under Parts 2424 and 2425 of this subchapter, not less than fifteen (15) days prior to the opening of a hearing, or with the appropriate presiding official(s) during the hearing.

(d) All requests shall name and identify the witnesses or documents sought, and state the reasons therefor.

The Authority, General Counsel, Administrative Law Judge, Regional Director, Hearing Officer, or any other employee of the Authority designated by the Authority, as appropriate, shall grant the request upon the determination that the testimony or documents appear to be necessary to the matters under investigation and the request describes with sufficient particularity the documents sought. Service of an approved subpena is the responsibility of the party on whose behalf the subpena was issued. The subpena shall show on its face the name and address of the party on whose behalf the subpena was issued.

(e) Any person served with a subpena who does not intend to comply, shall, within five (5) days after the date of service of the subpena upon such person, petition in writing to revoke the subpena. A copy of any petition to revoke a subpena shall be served on the party on whose behalf the subpena was issued. Such petition to revoke, if made prior to the hearing, and a written statement of service, shall be filed with the Regional Director, who may refer the petition to the Authority, General Counsel, Administrative Law Judge, Hearing Officer, or any other employee of the Authority designated by the Authority, as appropriate, for ruling. A petition to revoke a subpena filed during the hearing, and a written statement of service, shall be filed with the appropriate presiding official(s). The Regional Director, or the appropriate presiding official(s) will, as a matter of course, cause a copy of the petition to revoke to be served on the party on whose behalf the subpena was issued, but shall not be deemed to assume responsibility for such service. The Authority, General Counsel, Administrative Law Judge, Regional Director, Hearing Officer, or any other employee of the Authority designated by the Authority, as appropriate, shall revoke the subpena if the evidence the production of which is required does not relate to any matter under investigation or in question in the proceedings, or the subpena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpena is invalid. The Authority, General Counsel, Administrative Law Judge, Regional Director, Hearing Officer, or any other employee of the Authority designated by the Authority, as appropriate, shall make a simple statement of procedural or other ground for the ruling on the petition to revoke. The petition to revoke, any answer thereto, and any ruling thereon shall not become part of the official record except upon the request of the party aggrieved by the ruling.

(f) Upon the failure of any person to comply with a subpena issued, upon the request of the party on whose behalf the subpena was issued, the General Counsel shall, on behalf of such party, institute proceedings in the appropriate district court for the enforcement thereof, unless, in the judgment of the General Counsel, the enforcement of such subpena would be inconsistent with law and the policies of the Federal Service Labor-Management Relations Statute. The General Counsel shall not be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court thereafter.

§ 2429.8 Stay of arbitration award; requests.

(a) A request for a stay shall be entertained only in conjunction with and as a part of an exception to an arbitrator's award filed under Part 2425 of this subchapter. The filing of an exception shall not itself operate as a stay of the award involved in the proceedings.

(b) A timely request for a stay of an arbitrator's award to which an exception has been filed shall operate as a temporary stay of the award. Such temporary stay shall be deemed effective from the date of the award and shall remain in effect until the Authority issues its decision and order on the exception, or the Authority or its designee otherwise acts with respect to the request for the stay.

(c) A request for a stay of an arbitrator's award will be granted only where it appears, based upon the facts and circumstances presented, that:

(1) There is a strong likelihood of success on the merits of the appeal; and

(2) A careful balancing of all the equities, including the public interest, warrants issuance of a stay.

§ 2429.9 Amicus curiae.

Upon petition of an interested person, a copy of which petition shall be served on the parties, and as the Authority deems appropriate, the Authority may grant permission for the presentation of written and/or oral argument at any stage of the proceedings by an amicus curiae and the parties shall be notified of such action by the Authority.

§ 2429.10 Advisory opinions.

The Authority and the General Counsel will not issue advisory opinions.

§ 2429.11 Interlocutory appeals.

The Authority and the General Counsel ordinarily will not consider interlocutory appeals.

§ 2429.12 Service of process and papers by the Authority.

(a) *Methods of service.* Notices of hearings, Decisions and Orders of Regional Directors, decisions of Administrative Law Judges, complaints, written rulings on motions, decisions and orders, and all other papers required by this subchapter to be issued by the Authority, the General Counsel, Regional Directors, Hearing Officers and Administrative Law Judges, shall be served personally or be certified mail or by telegraph.

(b) *Upon whom served.* All papers required to be served under paragraph (a) of this section shall be served upon all counsel of record or other designated representative(s) of parties, and upon parties not so represented. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(c) *Proof of service.* Proof of service shall be the verified return by the individual serving the papers setting forth the manner of such service, the return post office receipt, or the return telegraph receipt. When service is by mail, the date of service shall be the day when the matter served is deposited in the United States mail.

[45 FR 3516, Jan. 17, 1980, as amended at 48 FR 40194, Sept. 6, 1983]

§ 2429.13 Official time.

If the participation of any employee in any phase of any proceeding before the Authority, including the investigation of unfair labor practice charges and representation petitions and the participation in hearings and representation elections, is deemed necessary by the Authority, the General Counsel, any Administrative Law Judge, Regional Director, Hearing Officer, or other agent of the Authority designated by the Authority, such employee shall be granted official time for such participation, including necessary travel time, as occurs during the employee's regular work hours and when the employee would otherwise be in a work or paid leave status. In addition, necessary transportation and per diem expenses shall be paid by the employing activity or agency.

§ 2429.14 Witness fees.

(a) Witnesses (whether appearing voluntarily, or under a subpena) shall be paid the fee and mileage allowances which are paid subpenaed witnesses in the courts of the United States: *Provided,* That any witness who is employed by the Federal Government shall not be entitled to receive witness fees in addition to compensation received pursuant to § 2429.13.

(b) Witness fees and mileage allowances shall be paid by the party at whose instance the witnesses appear, except when the witness receives compensation pursuant to § 2429.13.

§ 2429.15 Authority requests for advisory opinions.

(a) Whenever the Authority, pursuant to 5 U.S.C. 7105(i) requests an advisory opinion from the Director of the Office of Personnel Management concerning the proper interpretation of rules, regulations, or policy directives issued by that Office in connection with any matter before the Authority, a copy of such request, and any response thereto, shall be served upon the parties in the matter.

(b) The parties shall have fifteen (15) days from the date of service of a copy of the response of the Office of Personnel Management to file with the Authority comments on that response which the parties wish the Authority to consider before reaching a decision in the matter. Such comments shall be in writing and copies shall be served upon the other parties in the matter and upon the Office of Personnel Management.

§ 2429.16 General remedial authority.

The Authority shall take any actions which are necessary and appropriate to administer effectively the provisions of chapter 71 of title 5 of the United States Code.

§ 2429.17 Reconsideration.

After a final decision or order of the Authority has been issued, a party to the proceeding before the Authority who can establish in its moving papers extraordinary circumstances for so doing, may move for reconsideration of such final decision or order. The motion shall be filed within ten (10) days after service of the Authority's decision or order. A motion for reconsideration shall state with particularity the extraordinary circumstances claimed and shall be supported by appropriate citations. The filing and pendency of a motion under this provision shall not operate to stay the effectiveness of the action of the Authority, unless so ordered by the Authority. A motion for reconsideration need not be filed in order to exhaust administrative remedies.

[46 FR 40675, Aug. 11, 1981]

Subpart B—General Requirements

§ 2429.21 Computation of time for filing papers.

In computing any period of time prescribed by or allowed by this subchapter, except in agreement bar situations described in § 2422.3 (c) and (d) of this subchapter, and except as to the filing of exceptions to an arbitrator's award under § 2425.1 of this subchapter, the day of the act, event, or default from or after which the designated period of time begins to run, shall not be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or a Federal legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or a Federal legal holiday: *Provided, however,* In agreement bar situations described in § 2422.3 (c) and (d), if the sixtieth (60th) day prior to the expiration date of an agreement falls on Saturday, Sunday, or a Federal legal holiday, a petition, to be timely, must be received by the close of business of the last official workday preceding the sixtieth (60th) day. When the period of time prescribed or allowed is seven (7) days or less, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computations. When this subchapter requires the filing of any paper, such document must be received by the Authority or the officer or agent designated to receive such matter before the close of business on the last day of the time limit, if any, for such filing or extension of time that may have been granted.

§ 2429.22 Additional time after service by mail.

Except as to the filing of an application for review to a Regional Director's Decision and Order under § 2422.17 of this subchapter, whenever a party has the right or is required to do some act pursuant to this subchapter within a prescribed period after service of a notice or other paper upon such party, and the notice or paper is served on such party by mail, five (5) days shall be added to the prescribed period: Provided, however, That five (5) days shall not be added in any instance where an extension of time has been granted.

[48 FR 40194, Sept. 6, 1983]

§ 2429.23 Extension; waiver.

(a) Except as provided in paragraph (d) of this section, the Authority or General Counsel, or their designated representatives, as appropriate, may extend any time limit provided in this subchapter for good cause shown, and shall notify the parties of any such extension. Requests for extensions of time shall be filed in writing no later than five (5) days before the established time limit for filing, shall state the position of the other parties on the request for extension, and shall be served on the other parties.

(b) Except as provided in paragraph (d) of this section, the Authority or General Counsel, or their designated representatives, as appropriate, may waive any expired time limit in this subchapter in extraordinary circumstances. Request for a waiver of time limits shall state the position of the other parties and shall be served on the other parties.

(c) The time limits established in this subchapter may not be extended or waived in any manner other than that described in this subchapter.

(d) Time limits established in 5 U.S.C. *7105(f)*, 7117(c)(2) and 7122(b) may not be extended or waived under this section.

[45 FR 3516, Jan. 17, 1980, as amended at 48 FR 40194, Sept. 6, 1983]

§ 2429.24 Place and method of filing; acknowledgement.

(a) A document submitted to the Authority pursuant to this subchapter shall be filed with the Authority at the address set forth in the Appendix.

(b) A document submitted to the General Counsel pursuant to this subchapter shall be filed with the General Counsel at the address set forth in the Appendix.

(c) A document submitted to a Regional Director pursuant to this subchapter shall be filed with the appropriate regional office, as set forth in the Appendix.

(d) A document submitted to an Administrative Law Judge pursuant to this subchapter shall be filed with the appropriate Administrative Law Judge, as set forth in the Appendix.

(e) All documents filed pursuant to paragraphs (a), (b), (c) and (d) of this section shall be filed by certified mail or in person.

(f) All matters filed under paragraphs (a), (b), (c) and (d) of this section shall be printed, typed, or otherwise legibly duplicated: Carbon copies of typewritten matter will be accepted if they are clearly legible.

(g) Documents in any proceedings under this subchapter, including correspondence, shall show the title of the proceeding and the case number, if any.

(h) The original of each document required to be filed under this subchapter shall be signed by the party or by an attorney or representative of record for the party, or by an officer of the party, and shall contain the address and telephone number of the person signing it.

(i) A return postal receipt may serve as acknowledgement of receipt by the Authority, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer, as appropriate. The receiving officer will otherwise acknowledge receipt of documents filed only when the filing party so requests and includes an extra copy of the document or its transmittal letter which the receiving office will date stamp upon receipt and return. If return is to be made by mail, the filing party shall include a self-addressed, stamped envelope for the purpose.

§ 2429.25 Number of copies and paper size.

Unless otherwise provided by the Authority or the General Counsel, or their designated representatives, as appropriate, or under this subchapter, and with the exception of any prescribed forms, any document or paper filed with the Authority, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer, as appropriate, under this subchapter, together with any enclosure filed therewith, shall be submitted on 8½ x 11 inch size paper in an original and four (4) legible copies. A clean copy capable of being used as an original for purposes such as further reproduction may be substituted for the original.

[47 FR 55379, Dec. 9, 1982]

§ 2429.26 Other documents.

(a) The Authority or the General Counsel, or their designated representatives, as appropriate, may in their discretion grant leave to file other documents as they deem appropriate.

(b) A copy of such other documents shall be served on the other parties.

§ 2429.27 Service; statement of service.

(a) Except as provided in § 2423.10(c) and (d), any party filing a document as provided in this subchapter is responsible for serving a copy upon all counsel of record or other designated representative(s) of parties, upon parties not so represented, and upon any interested person who has been granted permission by the Authority pursuant to § 2429.9 to present written and/or oral argument as amicus curiae. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(b) Service of any document or paper under this subchapter, by any party, including documents and papers served by one party on another, shall be made by certified mail or in person. A return post office receipt or other written receipt executed by the party or person served shall be proof of service.

(c) A signed and dated statement of service shall be submitted at the time of filing. The statement of service shall include the names of the parties and persons served, their addresses, the date of service, the nature of the document served, and the manner in which service was made.

(d) The date of service or date served shall be the day when the matter served is deposited in the U.S. mail or is delivered in person.

§ 2429.28 Petitions for amendment of regulations.

Any interested person may petition the Authority or General Counsel in writing for amendments to any portion of these regulations. Such petition shall identify the portion of the regulations involved and provide the specific language of the proposed amendment together with a statement of grounds in support of such petition.

PART 2430—AWARDS OF ATTORNEY FEES AND OTHER EXPENSES

Sec.

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2430.2 Proceedings affected; eligibility for award.
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2430.14 Payment of award.

AUTHORITY: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

SOURCE: 46 FR 48623, Oct. 2, 1981, unless otherwise noted.

§ 2430.1 Purpose.

The Equal Access to Justice Act, 5 U.S.C. 504, provides for the award of attorney, agent, or witness fees and other expenses to eligible individuals and entities who are parties to agency adversary adjudications. An eligible party may receive an award when it prevails over an agency, unless the agency's position in the proceeding was substantially justified, or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards, and the Authority proceeding that is covered. They also set forth the procedures for applying for such awards, and the procedures by which the Authority will rule on such applications.

§ 2430.2 Proceedings affected; eligibility for award.

(a) The provisions of this part apply to unfair labor practice proceedings pending on complaint against a labor organization at any time between October 1, 1981, and September 30, 1984. They apply to proceedings begun before October 1, 1981, if final Authority action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final Authority action occurs.

(b) A respondent in an unfair labor proceeding which has prevailed in the proceeding, or in a significant and discrete portion of the proceeding, and who otherwise meets the eligibility requirements of this section, is eligible to apply for an award of attorneys fees and other expenses allowable under the provisions of § 2430.4 of these rules.

(1) Applicants eligible to receive an award in proceedings conducted by the Authority are any partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than five hundred (500) employees.

(2) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the complaint was issued.

(3) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(4) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

EDITORIAL NOTE: Consult the Federal Register for a document extending the effectiveness of these regulations.

§ 2430.3 Standards for awards.

(a) An eligible applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete portion of the proceeding, unless the position of the General Counsel over which the applicant has prevailed was substantially justified. The burden of proof that an award should not be made to an eligible applicant is on the General Counsel, who may avoid an award by showing that its position in initiating the proceeding was reasonable in law and fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

§ 2430.4 Allowable fees and expenses.

(a) No award for the fee of an attorney or agent under these rules may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate which the Authority pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(b) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the following matters may be considered:

(1) If the attorney, agent or witness is in practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(c) The reasonable cost of any study, analysis, engineering report, test, project or similar matters prepared on behalf of an applicant may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 2430.5 Rulemaking on maximum rates for attorney fees.

Any person may file with the Authority a petition under § 2429.28 of these rules for rulemaking to increase the maximum rate for attorney fees.

The petition should specify the rate the petitioner believes should be established and explain fully the reasons why the higher rate is warranted.

§ 2430.6 Contents of application; net worth exhibit; documentation of fees and expenses.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall state the particulars in which the applicant has prevailed and identify the positions of the General Counsel in the proceeding that the applicant alleges were not substantially justified. The application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall include a statement that the applicant's net worth does not exceed $5 million.

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Authority to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true.

(f) Each applicant must provide with its application a detailed exhibit showing the net worth of the applicant when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The Administrative Law Judge may require an applicant to file additional information to determine its eligibility for an award.

(g) The application shall be accompanied by full documentation of the fees and expenses for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The Administrative Law Judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 2430.7 When an application may be filed; referral to Administrative Law Judge; stay of proceeding.

(a) An application may be filed after entry of the final order establishing that the applicant has prevailed in the proceeding, or in a significant and discrete substantive portion of the proceeding, but in no case later than thirty (30) days after the entry of the Authority's final order in the proceeding. The application for an award shall be filed with the Authority in Washington, D.C., in an original and four copies, and served on all parties to the unfair labor practice proceeding. Service of the application shall be in the same manner as prescribed in §§ 2429.22 and 2429.27. Upon filing, the application shall be referred by the Authority to the Administrative Law Judge who heard the proceeding upon which the application is based, or, in the event the proceeding had not previously been heard by an Administrative Law Judge, it shall be referred to the Chief Administrative Law Judge for designation of an Administrative Law Judge, to consider the application. When the Administrative Law Judge to whom the application has been referred is or becomes unavailable, the provisions of § 2423.20 shall be applicable.

(b) Proceedings for the award of fees and other expenses, but not the time limit of this section for filing an application for an award, shall be stayed pending final disposition of the case, in the event any persons seeks Authority reconsideration or court review of the Authority decision that forms the basis for the application for fees and expenses.

§ 2430.8 Filing and service of documents.

All pleadings or documents after the time the case is referred by the Authority to an Administative Law Judge, until the issuance of the Judge's decision, shall be filed in an original and four copies with the Administrative Law Judge and served on all parties to the proceeding. Service of such documents shall be in the same manner as prescribed in §§ 2429.22 and 2429.27.

§ 2430.9 Answer to application; reply to answer; comments by other parties; extensions of time to file documents.

(a) Within 30 days after service of an application, the General Counsel may file an answer to the application. The filing of a motion to dismiss the application shall stay the time for filing an answer to a date thirty (30) days after issuance of any order denying the motion.

(b) If the General Counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate toward a settlement. The filing of such a statement shall extend the time for filing an answer for an additional 30 days.

(c) The answer shall explain in detail any objections to the award requested, and identify the facts relied on in support of the General Counsel's position. If the answer is based on alleged facts not already in the record of the proceeding, supporting affidavits shall be provided or a request made for further proceedings under § 2430.11.

(d) Within fifteen (15) days after service of an answer, the applicant may file a reply. If the reply is based on alleged facts not already in the record of the proceeding, supporting affidavits shall be provided or a request made for further proceedings under § 2430.11.

(e) Any party to a proceeding other than the applicant and the General Counsel may file comments on an application within 30 days after it is served, or on an answer within 15 days after it is served. A commenting party may not participate further in the proceeding on the application unless the Administrative Law Judge determines that such participation is required in order to permit full exploration of matters raised in the comments.

(f) Motions for extensions of time to file documents permitted by this section or § 2430.11 shall be filed with the Administrative Law Judge not less than five (5) days before the due date of the document.

§ 2430.10 Settlement.

The applicant and the General Counsel may agree on a proposed settlement of the award before final action on the application. If an applicant and the General Counsel agree on a proposed settlement of an award before an application has been filed, the proposed settlement shall be filed with the application. All such settlements shall be subject to approval by the Authority.

§ 2430.11 Further proceedings.

(a) The determination of an award may be made on the basis of the documents in the record, or the Administrative Law Judge, upon request of either the applicant or the General Counsel, or on his or her own initiative, may order further proceedings. Such further proceedings may include, but shall not be limited to, an informal conference, oral argument, additional written submissions, or an evidentiary hearing.

(b) A request that the Administrative Law Judge order further proceedings under this section shall specifically identify the disputed issues and the evidence sought to be adduced, and shall explain why the additional proceedings are necessary to resolve the issues.

(c) An order of the Administrative Law Judge scheduling oral argument, additional written submissions, or an evidentiary hearing, shall specify the issues to be considered in such argument, submission, or hearing.

(d) Any evidentiary hearing held pursuant to this section shall be conducted not earlier than forty-five (45) days after the date on which the application is served. In all other respects, such hearing shall be conducted in accordance with §§ 2423.14, 2423.16, 2423.17, 2423.19 through 2423.21, 2423.23, and 2423.24, insofar as these sections are consistent with the provisions of this part.

§ 2430.12 Administrative Law Judge's decision; contents; service; transfer of case to the Authority; contents of record in case.

(a) Upon conclusion of proceedings under §§ 2430.6 to 2430.11, the Administrative Law Judge shall prepare a decision. The decision shall include written findings and conclusions on the applicant's status as a prevailing party and eligibility, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the agency's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. The Administrative Law Judge shall cause the decision to be served promptly on all parties to the proceeding. Thereafter, the Administrative Law Judge shall transmit the case to the Authority, including the judge's decision and the record. Service of the Administrative Law Judge's decision and of the order transferring the case to the Board shall be complete upon mailing.

(b) The record in a proceeding on an application for an award of fees and expenses shall consist of the application for an award of fees and expenses and any amendments or attachments thereto, the net worth exhibit, the answer and any amendments or attachments thereto, any reply to the answer, any comments by other parties, motions, rulings, orders, stipulations, written submissions, the stenographic transcript of oral argument, the stenographic transcript of the hearing, exhibits and depositions, together with the Administrative Law Judge's decision, and the exceptions and briefs as provided in § 2430.13, and the record of the unfair labor practice proceeding upon which the application is based.

§ 2430.13 Exceptions to administrative law judge's decision; briefs; action of Authority.

Procedures before the Authority, including the filing of exceptions to the administrative law judge's decision rendered pursuant to § 2430.12, and action by the Authority, shall be in accordance with §§ 2423.26(c), 2423.27, and 2423.28 of these rules. The Authority's review of the matter shall be in accordance with § 2423.29(a).

§ 2430.14 Payment of award.

To obtain payment of an award made by the Authority the applicant shall submit to the Executive Director of the Authority a copy of the Authority's final decision granting the award, accompanied by a statement that the applicant will not seek court review of the decision. The amount awarded will then be paid unless judicial review of the award, or of the underlying decision, has been sought by the applicant or any other party to the proceeding.

SUBCHAPTER D—FEDERAL SERVICE IMPASSES PANEL

PART 2470—GENERAL

Subpart A—Purpose

Sec.
2470.1 Purpose.

Subpart B—Definitions

2470.2 Definitions.

Subpart A—Purpose

§ 2470.1 Purpose.

The regulations contained in this subchapter are intended to implement the provisions of section 7119 of title 5 of the United States Code. They prescribe procedures and methods which the Federal Service Impasses Panel may utilize in the resolution of negotiation impasses when voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve the disputes.

(5 U.S.C. 7119, 7134)

[45 FR 3520, Jan. 17, 1980]

Subpart B—Definitions

§ 2470.2 Definitions.

(a) The terms "agency," "labor organization," and "conditions of employment" as used herein shall have the meaning set forth in 5 U.S.C. 7103(a).

(b) The term "Executive Director" means the Executive Director of the Panel.

(c) The terms "designated representative" or "designee" of the Panel means a Panel member, a staff member, or other individual designated by the Panel to act on its behalf.

(d) The term "hearing" means a factfinding hearing, arbitration hearing, or any other hearing procedure deemed necessary to accomplish the purposes of 5 U.S.C. 7119.

(e) The term "impasse" means that point in the negotiation of conditions of employment at which the parties are unable to reach agreement, notwithstanding their efforts to do so by direct negotiations and by the use of mediation or other voluntary arrangements for settlement.

(f) The term "Panel" means the Federal Service Impasses Panel described in 5 U.S.C. 7119(c) or a quorum thereof.

(g) The term "party" means the agency or the labor organization participating in the negotiation of conditions of employment.

(h) The term "quorum" means a majority of the members of the Panel.

(i) The term "voluntary arrangements" means any method adopted by the parties for the purpose of assisting them in their resolution of a negotiation dispute which is not inconsistent with the provisions of 5 U.S.C. 7119.

(5 U.S.C. 7119, 7134)

[45 FR 3520, Jan. 17, 1980, as amended at 48 FR 19693, May 2, 1983]

PART 2471—PROCEDURES OF THE PANEL

Sec.
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2471.3 Content of request.
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2471.5 Copies and service.
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2471.7 Preliminary hearing procedures.
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2471.9 Report and recommendations.
2471.10 Duties of each party following receipt of recommendations.
2471.11 Final action by the Panel.
2471.12 Inconsistent labor agreement provisions.

AUTHORITY: 5 U.S.C. 7119, 7134.

SOURCE: 45 FR 3520, Jan. 17, 1980, unless otherwise noted.

§ 2471.1 Request for Panel consideration; request for Panel approval of binding arbitration.

If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse:

(a) Either party, or the parties jointly, may request the Panel to consider the matter by filing a request as hereinafter provided; or the Panel may, pursuant to 5 U.S.C. 7119(c)(1), undertake consideration of the matter upon request of (i) the Federal Mediation and Conciliation Service, or (ii) the Executive Director; or

(b) The parties may jointly request the Panel to approve any procedure, which they have agreed to adopt, for binding arbitration of the negotiation impasse by filing a request as hereinafter provided.

§ 2471.2 Request form.

A form has been prepared for use by the parties in filing a request with the Panel for consideration of an impasse or approval of a binding arbitration procedure. Copies are available from the Office of the Executive Director, Federal Service Impasses Panel, 500 C Street, SW., Washington, D.C. 20424.

[48 FR 5529, Feb. 7, 1983]

§ 2471.3 Content of request.

(a) A request from a party or parties to the Panel for consideration of an impasse must be in writing and include the following information:

(1) Identification of the parties and individuals authorized to act on their behalf;

(2) Statement of issues at impasse and the summary positions of the initiating party or parties with respect to those issues; and

(3) Number, length, and dates of negotiation and mediation sessions held, including the nature and extent of all other voluntary arrangements utilized.

(b) A request for approval of a binding arbitration procedure must be in writing, jointly filed by the parties, and include the following information about the pending impasse:

(1) Identification of the parties and individuals authorized to act on their behalf;

(2) Brief description of the impasse including the issues to be submitted to the arbitrator;

(3) Number, length, and dates of negotiation and mediation sessions held, including the nature and extent of all other voluntary arrangements utilized;

(4) Statement that the proposals to be submitted to the arbitrator contain no questions concerning the duty to bargain; and

(5) Statement of the arbitration procedures to be used, including the type of arbitration, the method of selecting the arbitrator, and the arrangement for paying for the proceedings or, in the alternative, those provisions of the parties' labor agreement which contain this information.

§ 2471.4 Where to file.

Requests to the Panel provided for in this part, and inquiries or correspondence on the status of impasses or other related matters, should be addressed to the Executive Director, Federal Service Impasses Panel, 500 C Street, SW., Washington, D.C. 20424.

[48 FR 5529, Feb. 7, 1983]

§ 2471.5 Copies and service.

(a) Any party submitting a request for Panel consideration of an impasse or a request for approval of a binding arbitration procedure shall file an original and one copy with the Panel and shall serve a copy of such request upon all counsel of record or other designated representative(s) of parties, upon parties not so represented, and upon any mediation service which may have been utilized. When the Panel acts on a request from the Federal Mediation and Conciliation Service or acts on a request from the Executive Director, it will notify the parties to the dispute, their counsel of record or designated representatives, is any, and any mediation service which may have been utilized. A clean copy capable of being used as an original for purposes such as further reproduction may be submitted for the original. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(b) Any party submitting a response to or other document in connection with a request for Panel consideration of an impasse or a request for approval of a binding arbitration procedure shall file an original and one copy with the Panel and shall serve a copy of the document upon all counsel of record or other designated representative(s) of parties, or upon parties not so represented. A clean copy capable of being used as an original for purposes such as further reproduction may be submitted for the original. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(c) A signed and dated statement of service shall accompany each document submitted to the Panel. The statement of service shall include the names of the parties and persons served, their addresses, the date of service, the nature of the document served, and the manner in which service was made.

(d) The date of service or date served shall be the day when the matter served is deposited in the U.S. mail or is delivered in person.

(e) Unless otherwise provided by the Panel or its designated representatives, any document or paper filed with the Panel under these rules, together with any enclosure filed therewith, shall be submitted on 8½ × 11 inch size paper.

[48 FR 19694, May 2, 1983]

§ 2471.6 Investigation of request; Panel recommendation and assistance; approval of binding arbitration.

(a) Upon receipt of a request for consideration of an impasse, the Panel or its designee will promptly conduct an investigation, consulting when necessary with the parties and with any mediation service utilized. After due consideration, the Panel shall either:

(1) Decline to assert jurisdiction in the event that it finds that no impasse exists or that there is other good cause for not asserting jurisdiction, in whole or in part, and so advise the parties in writing, stating its reasons; or

(2) Recommend to the parties procedures, including but not limited to arbitration, for the resolution of the impasse and/or assist them in resolving the impasse through whatever methods and procedures the Panel considers appropriate.

(b) Upon receipt of a request for approval of a binding arbitration procedure, the Panel or its designee will promptly conduct an investigation, consulting when necessary with the parties and with any mediation service utilized. After due consideration, the Panel shall either approve or disapprove the request; provided, however, that when the request is made pursuant to an agreed-upon procedure for arbitration contained in an applicable, previously negotiated agreement, the Panel may use an expedited procedure and promptly approve or disapprove the request, normally within five (5) workdays.

§ 2471.7 Preliminary hearing procedures.

When the Panel determines that a hearing is necessary under § 2471.6, it will:

(a) Appoint one or more of its designees to conduct such hearing; and

(b) Issue and serve upon each of the parties a notice of hearing and a notice of prehearing conference, if any. The notice will state: (1) The names of the parties to the dispute; (2) the date, time, place, type, and purpose of the hearing; (3) the date, time, place, and purpose of the prehearing conference, if any; (4) the name of the designated representatives appointed by the Panel; (5) the issues to be resolved; and (6) the method, if any, by which the hearing shall be recorded.

[45 FR 3520, Jan. 17, 1980, as amended at 48 FR 19694, May 2, 1983]

§ 2471.8 Conduct of hearing and prehearing conference.

(a) A designated representative of the Panel, when so appointed to conduct a hearing, shall have the authority on behalf of the Panel to:

(1) Administer oaths, take the testimony or deposition of any person under oath, receive other evidence, and issue subpenas;

(2) Conduct the hearing in open, or in closed session at the discretion of the designated representative for good cause shown;

(3) Rule on motions and requests for appearance of witnesses and the production of records;

(4) Designate the date on which posthearing briefs, if any, shall be submitted.

(5) Determine all procedural matters concerning the hearing, including the

length of sessions, conduct of persons in attendance, recesses, continuances, and adjournments; and take any other appropriate procedural action which, in the judgment of the designated representative, will promote the purpose and objectives of the hearing.

(b) A prehearing conference may be conducted by the designated representative of the Panel in order to:

(1) Inform the parties of the purpose of the hearing and the procedures under which it will take place;

(2) Explore the possibilities of obtaining stipulations of fact;

(3) Clarify the positions of the parties with respect to the issues to be heard; and

(4) Discuss any other relevant matters which will assist the parties in the resolution of the dispute.

[45 FR 3520, Jan. 17, 1980, as amended at 48 FR 19694, May 2, 1983]

§ 2471.9 Report and recommendations.

(a) When a report is issued after a hearing conducted pursuant to §§ 2471.7 and 2471.8, it normally shall be in writing and, when authorized by the Panel, shall contain recommendations.

(b) A report of the designated representative containing recommendations shall be submitted to the parties, with two (2) copies to the Executive Director, within a period normally not to exceed thirty (30) calendar days after receipt of the transcript or briefs, if any.

(c) A report of the designated representative not containing recommendations shall be submitted to the Panel with a copy to each party within a period normally not to exceed thirty (30) calendar days after receipt of the transcript or briefs, if any. The Panel shall then take whatever action it may consider appropriate or necessary to resolve the impasse.

§ 2471.10 Duties of each party following receipt of recommendations.

(a) Within thirty (30) calendar days after receipt of a report containing recommendations of the Panel or its designated representative, each party shall, after conferring with the other, either:

(1) Accept the recommendations and so notify the Executive Director; or

(2) Reach a settlement of all unresolved issues and submit a written settlement statement to the Executive Director; or

(3) Submit a written statement to the Executive Director setting forth the reasons for not accepting the recommendations and for not reaching a settlement of all unresolved issues.

(b) A reasonable extension of time may be authorized by the Executive Director for good cause shown when requested in writing by either party prior to the expiration of the time limits.

[45 FR 3520, Jan. 17, 1980, as amended at 48 FR 19694, May 2, 1983]

§ 2471.11 Final action by the Panel.

(a) If the parties do not arrive at a settlement as a result of or during actions taken under §§ 2471.6(a)(2), 2471.7, 2471.8, 2471.9, and 2471.10, the Panel may take whatever action is necessary and not inconsistent with 5 U.S.C. chapter 71 to resolve the impasse, including but not limited to, methods and procedures which the Panel considers appropriate, such as directing the parties to accept a factfinder's recommendations, ordering binding arbitration conducted according to whatever procedure the Panel deems suitable, and rendering a binding decision.

(b) In preparation for taking such final action, the Panel may hold hearings, administer oaths, take the testimony or deposition of any person under oath, and issue subpenas as provided in 5 U.S.C. 7132, or it may appoint or designate one or more individuals pursuant to 5 U.S.C. 7119(c)(4) to excercise such authority on its behalf.

(c) When the exercise of authority under this section requires the holding of a hearing, the procedure contained in § 2471.8 shall apply.

(d) Notice of any final action of the Panel shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless they agree otherwise.

[45 FR 3520, Jan. 17, 1980, as amended at 48 FR 19694, May 2, 1983]

§ 2471.12 Inconsistent labor agreement provisions.

Any provisions of the parties' labor agreements relating to impasse resolution which are inconsistent with the provisions of either 5 U.S.C. 7119 or the procedures of the Panel shall be deemed to be superseded, unless such provisions are permitted under 5 U.S.C. 7135.

PART 2472—IMPASSES ARISING PURSUANT TO AGENCY DETERMINATIONS NOT TO ESTABLISH OR TO TERMINATE FLEXIBLE OR COMPRESSED WORK SCHEDULES

Subpart A—Purpose and Definitions

Sec.
2472.1 Purpose.
2472.2 Definitions.

Subpart B—Procedures of the Panel

2472.3 Requests for Panel consideration.
2472.4 Content of request.
2472.5 Where to file.
2472.6 Agency determinations not to establish or to terminate a flexible or compressed work schedule; responses to requests for Panel consideration.
2472.7 Copies and service; paper size.
2472.8 Investigation of request; Panel assistance.
2472.9 Preliminary hearing procedures.
2472.10 Conduct of hearing and prehearing conference.
2472.11 Reports.
2472.12 Final action by the Panel.

AUTHORITY: Pub. L. 97-221, 96 Stat. 227 (5 U.S.C. 6131).

SOURCE: 48 FR 19695, May 2, 1983, unless otherwise noted.

Subpart A—Purpose and Definitions

§ 2472.1 Purpose.

The regulations contained in this Part are intended to implement the provisions of section 6131 of Title 5 of the United States Code. They prescribe procedures and methods which the Federal Service Impasses Panel may utilize in the resolution of negotiations impasses arising from agency determinations not to establish or to terminate flexible and compressed work schedules.

§ 2472.2 Definitions.

(a) The term "the Act" means the Federal Employees Flexible and Compressed Work Schedules Act of 1982, Pub. L. 97-221, 5 U.S.C. 6120 *et seq.*

(b) The term "adverse agency impact" shall have the meaning set forth in 5 U.S.C. 6131(b).

(c) The term "agency" shall have the meaning set forth in 5 U.S.C. 6121(1).

(d) The term "agency determination" means a determination: (1) Not to establish a flexible or compressed work schedule under 5 U.S.C. 6131(c)(2); or (2) to terminate such a schedule under 5 U.S.C. 6131(c)(3).

(e) The terms "collective bargaining agreement" and "exclusive representative" shall have the meanings set forth in 5 U.S.C. 6121(8).

(f) The term "Executive Director" means the Executive Director of the Panel.

(g) The terms "designated representative" or "designee" of the Panel means a Panel member, staff member, or other individual designated by the Panel to act on its behalf.

(h) The term "flexible and compressed work schedules" shall have the meaning set forth in 5 U.S.C. 6121 *et seq.*

(i) The term "hearing" means a factfinding hearing, arbitration hearing, or any other hearing procedures deemed necessary to accomplish the purpose of 5 U.S.C. 6131.

(j) The term "impasse" means that point in the negotiation of flexible and compressed work schedules at which the parties are unable to reach agreement on whether a schedule has had or would have an adverse agency impact.

(k) The term "Panel" means the Federal Service Impasses Panel described in 5 U.S.C. 7119(c) or a quorum thereof.

(l) The term "party" means the agency or the exclusive representative participating in negotiations concerning flexible and compressed work schedules.

(m) The term "quorum" means a majority of the members of the Panel.

(n) The term "schedule(s)" means flexible and compressed work schedules.

§ 2472.3 Request for Panel consideration.

Either party, or the parties jointly, may request the Panel to resolve an impasse resulting from an agency determination not to establish or to terminate flexible or compressed work schedule by filing a request as hereinafter provided.

§ 2472.4 Content of request.

(a) A request from a party or parties to the Panel for consideration of an impasse arising from an agency determination not to establish or to terminate a flexible or compressed work schedule under section 6131 (c)(2) or (c)(3) of the Act must be in writing and shall include the following information:

(1) Identification of the parties and individuals authorized to act on their behalf;

(2) Description of the bargaining unit involved in the dispute and the date recognition was accorded to the exclusive representative;

(3) Number, length, and dates of negotiation sessions held;

(4) A copy of any collective bargaining agreement between the parties and any other agreements concerning flexible and compressed work schedules;

(5) A copy of the schedule or proposed schedule, if any, which is the subject of the agency's determination;

(6) A copy of the agency's written determination, if any; and

(7) A summary of the position of the initiating party or parties with respect to the agency's determination.

§ 2472.5 Where to file.

Requests to the Panel provided for in these rules, and inquiries or correspondence on the status of impasses or other related matters, should be directed to the Executive Director, Federal Service Impasses Panel, 500 C Street, SW., Washington, D.C. 20424.

§ 2472.6 Agency determinations not to establish or to terminate a flexible or compressed work schedule; responses to requests for Panel consideration.

Within 10 calendar days after the date of receipt of a copy of a request for Panel consideration of an impasse arising from an agency determination not to establish or to terminate a flexible or compressed work schedule under sections 6131 (c)(2) or (3) of the Act, the responding party shall file with the Panel a statement of its position with respect to the request.

§ 2472.7 Copies and service; paper size.

(a) Any party submitting a request or other document in connection with a request for Panel consideration of an impasse filed pursuant to § 2472.3 of these rules shall file an original and one copy with the Panel. A clean copy capable of being used as an original for purposes such as further reproduction may be submitted for the original.

(b) Any party filing a document as provided in these rules is responsible for serving a copy upon all counsel of record or other designated representative(s) of parties, or upon parties not so represented. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(c) A signed and dated statement of service shall accompany each document submitted to the Panel. The statement of service shall include the names of the parties and persons served, their addresses, the date of service, the nature of the document served, and the manner in which service was made.

(d) The date of service or date served shall be the day when the matter served is deposited in the U.S. mail or is delivered in person.

(e) Unless otherwise provided by the Panel or its designated representatives, any document or paper filed with the Panel under these rules, together with any enclosure filed therewith, shall be submitted on 8½ x 11 inch size paper.

(f) The Panel shall not consider an impasse arising pursuant to section 6131(c) (2) or (3) of the Act to have been presented for consideration unless and until the party filing the request has complied with §§ 2472.4, 2472.5, and 2472.7 of these rules.

§ 2472.8 Investigation of request; Panel assistance.

(a) Upon receipt of a request for consideration of an impasse filed in accordance with these rules, the Panel or its designee shall promptly conduct an investigation, consulting when necessary with the parties. After due consideration, the Panel shall determine the procedures by which the impasse shall be resolved and shall notify the parties of its determination.

(b) The procedures utilized by the Panel shall afford the parties an opportunity to present their positions, including supporting evidence and arguments, orally and/or in writing. They include, but are not limited to, informal conferences with the Panel or its designee(s), hearings, written submissions, and Show Cause Orders.

§ 2472.9 Preliminary hearing procedures.

When the Panel determines that a hearing shall be held, it will:

(a) Appoint one or more of its designees to conduct such a hearing; and

(b) Issue and serve upon each of the parties a notice of hearing and a notice of prehearing conference, if any. The notice will state: (1) The names of the parties to the dispute; (2) the date, time, place, type, and purpose of the hearing; (3) the date, time, place, and purpose of the prehearing conference, if any; (4) the name of the designated representative(s) appointed by the Panel; (5) the issue(s) to be resolved; and (6) the method, if any, by which the hearing shall be transcribed.

§ 2472.10 Conduct of hearing and prehearing conference.

(a) A designated representative of the Panel, when so appointed to conduct a hearing, shall have the authority on behalf of the Panel to:

(1) Administer oaths, take the testimony or deposition of any person under oath, receive other evidence, and issue subpoenas;

(2) Conduct the hearing in open or in closed session at the discretion of the designated representative for good cause shown;

(3) Rule on motions and requests for appearance of witnesses and the production of records;

(4) Designate the date on which posthearing briefs, if any, shall be submitted; and

(5) Determine all procedural matters concerning the hearing, including the length of sessions, conduct of persons in attendance, recesses, continuances, and adjournments; and take any other action which, in the judgment of the designated representative, will promote the purpose and objectives of the hearing.

(b) A prehearing conference may be conducted by the designated representative of the Panel to:

(1) Inform the parties of the purpose of the hearing and the procedures under which it will take place;

(2) Explore the possibilities of obtaining stipulations of fact;

(3) Clarify the positions of the parties with respect to the issues to be heard; and

(4) Discuss any other relevant matters which will assist the parties in the resolution of the dispute.

§ 2472.11 Reports.

When a report is issued after an informal conference authorized in accordance with § 2472.8, or a hearing conducted pursuant to §§ 2472.9 and 2472.10, it normally shall be in writing and shall be submitted to the Panel, with a copy to each party, within a period normally not to exceed 30 calendar days after the close of the hearing or informal conference and receipt of briefs, if any.

§ 2472.12 Final action by the Panel.

(a) After due consideration of the parties' positions, evidence, and arguments, including any report submitted in accordance with § 2472.11, the Panel shall take final action in favor of the agency's determination if:

(1) The finding on which a determination under 5 U.S.C. 6131(c)(2) not to establish a flexible or compressed work schedule is based is supported by evidence that the schedule is likely to cause an adverse agency impact; or

(2) The finding on which a determination under 5 U.S.C. 6131(c)(3) to terminate a flexible or compressed work schedule is based is supported by evidence that the schedule has caused an adverse agency impact.

(b) If the finding on which an agency determination under 5 U.S.C. 6131(c)(2) or (c)(3) is based is not supported by evidence that the schedule is likely to cause or has caused an adverse agency impact, the Panel shall take whatever final action is necessary to resolve the impasse.

(c) In preparation for taking such final action, the Panel may hold hearings, administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas, or it may appoint one or more individuals to exercise such authority on its behalf. Such action may be taken without regard to procedures previously authorized by the Panel.

(d) Notice of any final action of the Panel shall be promptly served upon the parties.

APPENDIX A TO 5 CFR CHAPTER XIV—CURRENT ADDRESSES AND GEOGRAPHIC JURISDICTIONS

(a) The Office address of the Authority is: 500 C Street, SW., Washington, D.C. 20424; telephone: FTS 382-0777, or Commercial (202) 382-0777.

(b) The Office address of the General Counsel is: 500 C Street, SW., Washington, D.C. 20424; telephone: FTS 382-0742; or Commercial (202) 382-0742.

(c) The Office address of the Chief Administrative Law Judge is: 500 C Street, SW., Washington, D.C. 20424; telephone: FTS 382-0851; or Commercial (202) 382-0851.

(d) The Office addresses of Regional Directors of the Authority are as follows:

(1) *Boston Regional Office*—441 Stuart Street, 9th Floor, Boston, MA. 02116, Telephone: FTS—223-0920, Commercial—(617) 223-0920

(2) *New York Regional Office*—26 Federal Plaza, Room 2237, New York, New York 18278, Telephone: FTS—264-4934, Commercial—(212) 264-4934.

(a) *Philadelphia, PA Sub-Regional Office*—Room 5000, Mall Building, 325 Chestnut Street, Philadelphia, Pennsylvania 19106, Telephone: FTS—597-1527, Commercial—(215) 597-1527

(3) *Washington Regional Office*—1111 18th Street, NW., 7th Floor, Washington, D.C. 20033, Telephone: FTS—653-8500; Commercial—(202) 653-8500,Mailing Address: P.O. Box 33758, Washington, D.C. 20033-0758.

(4) *Atlanta Regional Office*—1776 Peachtree Street, NW., Suite 501, North Wing, Atlanta, GA 30309, Telephone: FTS—257-2324, Commercial—a (404) 881-2324 or 881-2325

(5) *Chicago Regional Office*—175 West Jackson Boulevard, Suite 1359-A, Chicago, Illinois 60604, Telephone: FTS—886-3468, 3469; Commercial—(312) 353-6306

(a) *Cleveland, Ohio Sub-Regional Office*—1301 Superior Avenue, Room 280, Cleveland, Ohio 44114.

(6) *Dallas Regional Office*—Federal Office Building, 525 Griffin Street, Suite 926, Dallas, Texas 75202, Telephone: FTS—729-4996, Commercial—(214) 767-4996.

(7) *Denver Regional Office*— Suite 310, 535 16th Street, Denver, Colorado 80202. Telephone: FTS—564-5224. Commercial—(303) 844-5224.

(8) *Los Angeles Regional Office*—350 So. Figueroa Street, 10th Floor, World Trade Center, Los Angeles, CA 90071, Telephone: FTS—798-3805, Commercial—(213) 688-3805.

(9) *San Francisco Regional Office*—530 Bush Street, Room 542, San Francisco, California 94108, Telephone: FTS 556-8105, Commercial: (415) 556-8105.

(e) The Office address of the Panel is as follows: 500 C Street, SW., Washington, D.C. 20424. Telephone: FTS—382-0981, Commercial—(202) 382-0981.

(f) The geographic jurisdictions of the Regional Directors of the Authority, are as follows:

State or other locality	Regional office
Alabama	Atlanta
Alaska	San Francisco
Arizona	Los Angeles
Arkansas	Dallas
California	Los Angeles/San Francisco[1]
Colorado	Kansas City
Connecticut	Boston
Delaware	New York
District of Columbia	Washington, D.C.
Florida	Atlanta
Georgia	Atlanta
Hawaii and all land and water areas west of the continents of North and South America (except coastal islands) to long. 90° E.	Los Angeles
Idaho	San Francisco
Illinois	Chicago
Indiana	Chicago
Iowa	Kansas City
Kansas	Kansas City
Kentucky	Atlanta
Louisiana	Dallas
Maine	Boston

State or other locality	Regional office
Maryland	Washington, D.C.
Massachusetts	Boston
Michigan	Chicago
Minnesota	Chicago
Mississippi	Atlanta
Missouri	Kansas City
Montana	Kansas City
Nebraska	Kansas City
Nevada	San Francisco
New Hampshire	Boston
New Jersey	New York
New Mexico	Dallas
New York	Boston/New York[2]
North Carolina	Atlanta
North Dakota	Kansas City
Ohio	Chicago
Oklahoma	Dallas
Oregon	San Francisco
Pennsylvania	New York
Puerto Rico	New York
Rhode Island	Boston
South Carolina	Atlanta
South Dakota	Kansas City
Tennessee	Atlanta
Texas	Dallas
Utah	Kansas City
Vermont	Boston
Virginia	Washington, D.C./Atlanta.[3]
Washington	San Francisco
West Virginia	Washington, D.C.
Wisconsin	Chicago
Wyoming	Kansas City
Virgin Islands	New York
Panama/Limited FLRA jurisdiction.	Dallas
All land and water areas east of the continents of North and South America to long. 90° E, except the Virgin Islands, Panama (limited FLRA jurisdiction), Puerto Rico and coastal islands.	Boston

[1] San Francisco includes the following California counties: Monterey, Kings, Tulare, Inyo, and all counties north thereof. All counties in California south thereof are within the Los Angeles jurisdiction.

[2] New York includes the following counties: Ulster, Sullivan, Greene, Columbia and all counties south thereof. All counties in New York state north thereof are in the jurisdiction of Boston.

[3] Washington, D.C. includes the following Virginia counties: Alexandria, Arlington, Fairfax, Fauquier, Loudoun and Prince William. All other counties in Virginia are in the jurisdiction of Atlanta.

[45 FR 3522, Jan. 17, 1980]

EDITORIAL NOTE: For Federal Register citations affecting Appendix A, see the List of CFR Sections Affected in the Finding Aids section of this volume.

APPENDIX B TO 5 CFR CHAPTER XIV—MEMORANDUM DESCRIBING THE AUTHORITY AND ASSIGNED RESPONSIBILITIES OF THE GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY

The statutory authority and responsibility of the General Counsel of the Federal Labor Relations Authority are stated in section 7104(f), subsections (1), (2) and (3), of the Federal Service Labor-Management Relations Statute as follows:

> (1) The General Counsel of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed at any time by the President. The General Counsel shall hold no other office or position in the Government of the United States except as provided by law.
>
> (2) The General Counsel may—
>
> (A) investigate alleged unfair labor practices under this chapter,
>
> (B) file and prosecute complaints under this chapter, and
>
> (C) exercise such other powers of the Authority as the Authority may prescribe.
>
> (3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of the General Counsel, including employees of the General Counsel in the regional offices of the Authority.

This memorandum is intended to describe the statutory authority and set forth the prescribed duties and authority of the General Counsel of the Federal Labor Relations Authority, effective January 28, 1980.

I. *Case handling—A. Unfair labor practice cases.* The General Counsel has full and final authority and responsibility, on behalf of the Authority, to accept and investigate charges filed, to enter into and approve the informal settlement of charges, to approve withdrawal requests, to dismiss charges, to determine matters concerning the consolidation and severance of cases before the complaint issues, to issue complaints and notices of hearing, to appear before Administrative Law Judges in hearings on complaints and prosecute as provided in the Authority's and the General Counsel's rules and regulations, and to initiate and prosecute injunction proceedings as provided for in section 7123(d) of the Statute. After issuance of the Administrative Law Judge's decision, the General Counsel may file exceptions and briefs and appear before the Authority in oral argument, subject to the Authority's and the General Counsel's rules and regulations.

B. *Compliance actions (injunction proceedings).* The General Counsel is authorized and responsible, on behalf of the Authority, to seek and effect compliance with the Authority's orders and make such compliance reports to the Authority as it may from time to time require.

On behalf of the Authority, the General Counsel will, in full accordance with the directions of the Authority, initiate and prosecute injunction proceedings as provided in section 7123(d) of the Statute: *Provided however,* That the General Counsel will initiate and conduct injunction proceedings under section 7123(d) of the Statute only upon approval of the Authority.

C. *Representation cases.* The statutory authority of the Federal Labor Relations Authority to delegate to Regional Directors its authority to process and determine representation matters is set forth in section 7105 (e)(1) and (f) of the Statute as follows:

(e)(1) The Authority may delegate to any regional director its authority under this chapter—

(A) to determine whether a group of employees is an appropriate unit;

(B) to conduct investigations and to provide for hearings;

(C) to determine whether a question of representation exists and to direct an election; and

(D) to supervise or conduct secret ballot elections and certify the results thereof.

(f) If the Authority delegates any authority to any regional director . . . to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of action. The Authority may affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of—

(1) the date of the action, or

(2) the date of the filing of any application under this subsection for review of the action;

the action shall become the action of the Authority at the end of such 60 day period.

In accordance with section 7105 (e)(1) and (f) of the Statute, Regional Directors, who are directed and supervised by the General Counsel as provided by section III of this memorandum, are hereby delegated the authority to determine whether a group of employees is an appropriate unit, to conduct investigations and to provide for hearings, to determine whether a question of representation exists and to direct an election, and to supervise or conduct secret ballot elections and certify the results thereof.

Regional Directors are authorized and have responsibility to receive and process, in accordance with decisions of the Authority and the rules and regulations of the Authority and the General Counsel, all petitions filed pursuant to sections 7111, 7112(d), 7113, 7115 and 7117(d) of the Statute.

The authority and responsibility of Regional Directors in cases filed involving such petitions shall extend to all phases of the investigation of such petitions through the conclusion of the hearing to be conducted by a Regional Office employee (if a hearing should be necessary to resolve disputed issues), including decisional action by the Regional Director after such investigation or hearing.

Regional Directors also are authorized and have responsibility to direct an election after a hearing pursuant to sections 7111 and 7112(d) of the Statute and to approve consent election agreements in accordance with section 7111(g) of the Statute.

In the event a Regional Director directs an election or approves a consent election agreement, the Regional Director is authorized to supervise or conduct the election pursuant to section 7111 and 7112(d) of the Statute. In such instances, Regional Directors are authorized and have responsibility to determine the validity of determinative challenges and objections to the conduct of the election and other similar matters. This authority and responsibility extends to all phases of the investigation such determinative challenges and objections through the conclusion of a hearing to be conducted by a Regional Office employee (if a hearing should be necessary to resolve disputed issues), including decisional action by the Regional Director after such investigation or hearing.

Decisions and Orders of Regional Directors made pursuant to this delegation of authority become the action of the Authority:

(1) If no interested person files an application for review of the Regional Director's Decision and Order with the Authority within sixty (60) days after the Regional Director's Decision and Order; or

(2) If the Authority does not undertake to grant review of the Regional Director's Decision and Order within sixty (60) days after the filing of a timely application for review;

If no interested person files an application for review of the Regional Director's Decision and Order with the Authority within (60) days after the Regional Director's Decision and Order, or if the Authority does not undertake to grant review of the action of the regional Director's Decision and Order within sixty (60) days after the filing of a timely application for review, the Regional Director's Decision and Order will become final and binding, and the Regional Director will certify to the parties the results of any election held or issue any clarification of unit, amendment of recognition or certification, determination of eligibility for dues allotment, or certification on consolidation of units as required.

The Authority will undertake to grant review of a Decision and Order of a Regional Director upon the timely filing of an application for review only where compelling reasons exist therefor as set forth in the rules and regulations.

The Authority's granting of review upon the timely filing of an application for review of a Regional Director's Decision and Order will not operate as a stay of such action ordered by the Regional Director, unless specifically ordered by the Authority. If the Authority grants review, the Authority may affirm, modify or reverse action reviewed.

II. *Liaison with other governmental agencies.* The General Counsel is authorized and has responsibility, on behalf of the Authority, to maintain appropriate and adequate liaison and arrangements with the Office of the Assistant Secretary of Labor for Labor-Management Relations with reference to the financial and other reports required to be filed with the Assistant Secretary pursuant to section 7120(c) of the Statute and the availability to the Authority and the General Counsel of the contents thereof. The General Counsel is authorized and has responsibility, on behalf of the Authority, to maintain appropriate and adequate liaison with the Federal Mediation and Conciliation Service with respect to functions which may be performed by the Federal Mediation and Conciliation Service.

III. *Personnel.* Under 5 U.S.C. 7105(d), the Authority is authorized to appoint Regional Directors. In order better to ensure the effective exercise of the duties and responsibilities of the General Counsel described above, the General Counsel is delegated authority to recommend the appointment, transfer, demotion or discharge of any Regional Director. However, such actions may be taken only with the approval of the Authority. The General Counsel shall have authority to direct and supervise the Regional Directors. Under 5 U.S.C. 7104(f)(3), the General Counsel shall have direct authority over, and responsibility for all employees in the Office of the General Counsel and all personnel of the General Counsel in the field offices of the Authority. This includes full and final authority subject to applicable laws and rules, regulations and procedures of the Office of Personnel Management and the Authority over the selection, retention, transfer, promotion, demotion, discipline, discharge and in all other respects of such personnel except the appointment, transfer, demotion or discharge of any Regional Director. Further, the establishment, transfer, or elimination of any regional office or non-regional office duty location may be accomplished only with the approval of the Authority. The Authority will provide such administrative support functions, including personnel management, financial management and procurement functions, through the Office of Administration of the Authority as are required by the General Counsel to carry out the General Counsel's statutory and prescribed functions.

IV. To the extent that the above-described duties, powers and authority rest by statute with the Authority, the foregoing statement constitutes a prescription and assignment of such duties, powers and authority, whether or not so specified.

[45 FR 3523, Jan. 17, 1980, as amended at 48 FR 28814, June 23, 1983]

CHAPTER XV—OFFICE OF ADMINISTRATION, EXECUTIVE OFFICE OF THE PRESIDENT

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PART 2500—INFORMATION SECURITY REGULATION

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2500.11 Implementation and review.

AUTHORITY: Sec. 5-404 of Executive Order 12065.

SOURCE: 44 FR 50039, Aug. 27, 1979; 45 FR 20453, Mar. 28, 1980; 45 FR 22873, Apr. 4, 1980, unless otherwise noted.

§ 2500.1 Introduction.

(a) *References.* (1) Executive Order 12065, "National Security Information", dated June 28, 1978.

(2) Information Security Oversight Office Directive No. 1, "National Security Information", dated October 2, 1978.

(b) *Purpose.* The purpose of this regulation is to ensure, consistent with the authorities listed in Section (a), that national security information held by the Office of Administration is protected to the extent necessary to safeguard the national security.

(c) *Applicability.* This regulation governs the Office of Administration. Together with the authorities listed in Section (a), it establishes the policies and procedures fcr safeguarding of information that is under the control of the Office of Administration.

§ 2500.3 Original classification.

No one in the Office of Administration has been granted authority for original classification of information.

§ 2500.5 Derivative classification.

The Office of Administration serves only as the temporary physical custodian of classified information which originated in other agencies of the Executive Office of the President. Therefore, no one in the Office of Administration incorporates, restates, paraphrases or generates in a new form information which is already classified.

§ 2500.7 Declassification and downgrading.

(a) *Declassification authority.* No one in the Office of Administration has the authority to declassify or downgrade classified information.

(b) *Mandatory review for declassification.* Requests for mandatory review for declassification of classified information contained in the records of any Executive Office of the President agency for which the Office of Administration provides services should be addressed directly to the agency which is the owner of the record, in accordance with that agency's published Information Security Regulation.

§ 2500.9 Safeguarding.

The Office of Administration shall protect information in its custody against unauthorized disclosure commensurate with its level of classification.

§ 2500.11 Implementation and review.

The Information Security Oversight Committee of the Office of Administration shall be chaired by the agency's General Counsel. The Committee shall be responsible for acting on all suggestions and complaints concerning the administration of the information security program. The chairperson shall also be responsible for conducting an active oversight program to ensure effective implementation of Executive Order 12065.

PART 2502—AVAILABILITY OF RECORDS

Subpart A—Production or Disclosure of Records Under the Freedom of Information Act, 5 U.S.C. 552

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AUTHORITY: 5 U.S.C. 552, as amended by Pub. L. 93-502.

SOURCE: 45 FR 47112, July 14, 1980, unless otherwise noted.

Subpart A—Production or Disclosure of Records Under the Freedom of Information Act, 5 U.S.C. 552

§ 2502.1 Definitions.

(a) "Office" or "OA" means the Office of Administration, Executive Office of the President;

(b) "Agency" means agency as defined in 5 U.S.C. 552(e);

(c) "Workday" means those days when the Office is open for the conduct of government business, and does not include Saturdays, Sundays and legal public holidays;

(d) "FOIA" means Freedom of Information Act, 5 U.S.C. 552, as amended.

[45 FR 47112, July 14, 1980, as amended at 49 FR 28233, July 11, 1984]

§ 2502.2 Purpose and scope.

This subpart contains the regulations of the Office of Administration, Executive Office of the President, implementing 5 U.S.C. 552. The regulations of this subpart describe the procedures by which records may be obtained from all organizational units within the Office of Administration. Official records of the Office made available pursuant to the requirements of 5 U.S.C. 552 shall be furnished to members of the public only as prescribed by this subpart. To the extent that it is not prohibited by other laws the Office also will make available records which it is authorized to withhold under 5 U.S.C. 552 whenever it determines that such disclosure is in the public interest.

[45 FR 47112, July 14, 1980. Redesignated at 49 FR 28233, July 11, 1984]

§ 2502.3 Organization and functions.

(a) The Office of Administration (OA) was created by Reorganization Plan No. 1 of 1977 and Executive Order 12028. Its primary function is to provide common administrative and support services for the various agencies and offices of the Executive Office of the President. It consists of:

(1) The Office of the Director which includes the General Counsel;

(2) The Office of the Deputy Director;

(3) Five Directors and their staffs, who are responsible for the following Divisions:

(i) Administrative Operations;
(ii) Automated Systems;
(iii) Financial Management;
(iv) Library and Information Services; and
(v) Personnel.

(b) The Office has no field organization. Offices are presently located in the Old Executive Office Building, 17th and Pennsylvania Avenue NW., 20500, and in the New Executive Office Building, 726 Jackson Place NW., Washington, D.C. 20503. Regular office hours are from 9:00 a.m. to 5:30 p.m., Monday through Friday. Both buildings are under security control. Persons desiring access are encourged to make advance arrangements by telephone with the office they plan to visit.

[49 FR 28233, July 11, 1984; 49 FR 29769, July 24, 1984]

§ 2502.4 Public reference facilities and current index.

(a) The Office maintains a public reading area located in the Executive Office of the President Information Center, Room G-102, New Executive Office Building, 726 Jackson Place NW., Washington, D.C., and makes available for public inspection and copying a copy of all material required by 5 U.S.C. 552(a)(2), including all documents published by OA in the FEDERAL REGISTER and currently in effect.

(b) The FOIA Officer or his or her designee shall maintain files containing all materials required to be retained by or furnished to the FOIA Officer under this subpart. The material shall be filed by chronological number of request within each calendar year, indexed according to the exceptions asserted, and, to the extent feasible, indexed according to the type of records requested.

(c) The FOIA Officer shall also maintain a file open to the public, which shall contain copies of all grants or denials of appeals by the Office.

[49 FR 28233, July 11, 1984]

§ 2502.5 Records of other Agencies.

Requests for records that originated in another Agency and are in the custody of the Office of Administration, will be referred to that Agency for processing, and the person submitting the request shall be so notified. The decision made by that Agency with respect to such records will be honored by the Office of Administration.

[45 FR 47112, July 14, 1980. Redesignated at 49 FR 28233, July 11, 1984]

§ 2502.6 How to request records—form and content.

(a) A request made under the FOIA must be submitted in writing, addressed to: FOIA Officer, Office of Administration, New Executive Office Building NW., Room 2200, Washington, D.C. 20503. The words "FOIA REQUEST" should be clearly marked on both the letter and the envelope. Due to security measures at the Old and New Executive Office Buildings, requests made in person (by other than current employees of the Executive Office of the President) should be delivered to the Mail Room, Room G-202, NEOB.

(b) Any Office employee or official who receives a FOIA Request shall promptly forward it to the FOIA Officer, at the above address. Any Office employee or official who receives an oral request made under the FOIA shall inform the person making the request of the provisions of this subpart requiring a written request according to the procedures set out herein.

(c) Each request must reasonably describe the record(s) sought, including when known: Agency/individual originating the record, date, subject matter, type of document, location, and any other pertinent information which would assist in promptly locating the records(s).

(d) When a request is not considered reasonably descriptive, or requires the production of voluminous records, or places an extraordinary burden on the Office of Administration, seriously interfering with its normal functioning to the detriment of the business of the Government, the Office may require the person or agent making the FOIA request to confer with an Office representative in order to attempt to verify, and, if possible, narrow the scope of the request.

(e) Upon initial receipt of the FOIA request, the FOIA officer will determine which official or officials within the Office shall have the primary responsibility for collecting and reviewing the requested information and drafting a proposed response.

[49 FR 28233, July 11, 1984]

§ 2502.7 Initial determination.

The General Counsel or his or her designee shall have the authority to approve or deny requests received pursuant to these regulations. The decision of the Deputy Director shall be final, subject only to administrative review as provided in § 2502.10.

[45 FR 47112, July 14, 1980. Redesignated and amended at 49 FR 28234, July 11, 1984]

§ 2502.8 Prompt response.

(a) The General Counsel or his or her designee shall either approve or deny a request for records within 10 working days after receipt of the request unless additional time is required for one of the following reasons:

(1) It is necessary to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(2) It is necessary to consult with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(b) When additional time is required for one of the reasons stated in paragraph (a) of this section, the General Counsel or his or her designee shall acknowledge receipt of the request within the 10 workday period and include a brief explanation of the reason for the delay, indicating the date by which a determination will be forthcoming. An extended deadline adopted for one of the reasons set forth above may not exceed 10 additional workdays.

[45 FR 47112, July 14, 1980. Redesignated and amended at 49 FR 28234, July 11, 1984]

§ 2502.9 Responses—form and content.

(a) When a requested record has been identified and is available, the General Counsel or his or her designee shall notify the person making the request as to where and when the record is available for inspection or the copies will be available. The notification shall also advise the person making the request of any fees assessed under § 2502.13 hereof.

(b) A denial or partial denial of a request for a record shall be in writing signed by the General Counsel or his or her designee and shall include:

(1) The name and title of the person making the determination;

(2) A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of the record, and a brief explanation of how the exemption applies to the record withheld; or

(3) A statement that, after diligent effort, the requested records have not been found or have not been adequately examined during the time allowed by § 2502.9, and that the denial will be reconsidered as soon as the search or examination is complete;

(4) A statement that the denial may be appealed to the Director within 30 days of receipt of the denial or partial denial.

If a requested record cannot be located from the information supplied, or is known to have been destroyed or otherwise disposed of, the person making the request shall be so notified and the legal authority for disposition shall be cited.

[45 FR 47112, July 14, 1980. Redesignated and amended at 49 FR 28234, July 11, 1984]

§ 2502.10 Appeals to the Director from initial denials.

(a) When the General Counsel or his or her designee had denied a request for records in whole or in part, the person making the request may, within 30 days of its receipt, appeal the denial to the Director. The appeal must be in writing, addressed to the Director, Office of Administration, 726 Jackson Place, NW., Washington, D.C. 20503 and clearly labeled as a "Freedom of Information Act Appeal".

(b) The Director will act upon the appeal within 20 workdays of its receipt. The Director may extend the 20 day period of time by any number of workdays which could have been claimed and consumed by the General Counsel or his or her designee under § 2502.9 but which were not claimed and consumed in making the initial determination. The Office of Administration's action on an appeal shall be in writing, signed by the Director of the Office.

(c) If the decision is in favor of the person making the request, the Director shall order records promptly made available to the person making the request.

(d) A denial in whole or in part of a request on appeal shall set forth the exemption relied on and a brief explanation of how the exemption applied to the records withheld and the reasons for asserting it, if different from that described by the General Counsel or his or her designee under § 2502.10. The denial shall state that the person making the request may, if dissatisfied with the decision on appeal, file a civil action in the district in which the person resides or has his principal place of business, in the district where the records are located, or in the District of Columbia.

(e) No personal appearance, oral argument or hearing will ordinarily be permitted in connection with an appeal to the Office of Administration.

(f) On appeal, the Office may reduce any fees previously assessed.

[45 FR 47112, July 14, 1980. Redesignated and amended at 49 FR 28234, July 11, 1984]

§ 2502.11 Schedule of fees.

(a) Except as otherwise provided, the following specific fees shall be applicable with respect to services rendered under this subpart:

(1) *Search for Records.* $6.00 per hour when the search is conducted by a clerical employee. There will be no charges for searches of less than one hour. When a search and retrieval cannot be made by clerical personnel (e.g., the identification of records within the scope of a request requires the use of professional or managerial personnel), the fee will be the actual rate paid to the employee.

(2) *Duplication of Records.* Records will be duplicated at a rate of $0.10 per page for copying four (4) pages or more. There will be no charges for duplicating three (3) pages or less. Microfilm documents will be duplicated at a rate of $1.00 per page. For copies prepared by computer, either tape or printouts, the actual cost of production will be charged.

(3) *Other.* When no specific fee has been established for a service, the General Counsel is authorized to establish an appropriate fee based on "direct costs" as provided in the FOIA. Examples of services covered by this provision include searches involving computer time, including runs, time of programmers and operators, or special travel, transportation, or communication costs.

(b) If the Office anticipates that the fees chargeable under this section will amount to more than $30, or the maximum amount specified in the request, the requester shall be promptly notified by phone or in writing of the estimated amount of the fee before costs have been incurred, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. In such instances, the requester will be advised of the option to consult with Office personnel in order to reformulate the request in a manner which will reduce the fees, yet still meet the requester's needs. A reformulated request shall be considered a new request, thus beginning a new 10 workday period for processing.

[49 FR 28234, July 11, 1984]

§ 2502.12 Waiver of fees.

The FOIA Officer or his or her designee shall assess fees for the search and, if necessary, duplication of records requested. The General Counsel, FOIA Officer, or his or her designee, shall also have authority to furnish records without charge, or at a reduced charge, where he or she determines that waiver or reduction of the fees is in the public interest or where assessment of fees is not administratively feasible. There will be no fee where records are not provided or are not made available.

[49 FR 28234, July 11, 1984]

§ 2502.13 Payment of fees.

(a) Fees must be paid in full prior to issuance of the requested copies. Where a requester has previously failed to pay a fee charged, the requester must pay the agency the full amount owed and make an advance deposit of the full amount of the estimated fee before the agency shall be required to process a new request or a pending request for that requester. Fees for search time must be paid before requests are made available.

(b) Payment of fees shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasurer of the United States and mailed or delivered to the FOIA Officer, Office of Administration, 726 Jackson Place, NW., Room 2200, Washington, D.C. 20503.

[49 FR 28234, July 11, 1984]

§ 2502.14 Information to be disclosed.

(a) In general, all records of the Office of Administration are available to the public, as required by the Freedom of Information Act. However, the Office claims the right, where it is applicable, to withhold material under the provisions specified in the Freedom of Information Act as amended (5 U.S.C. 552(b)).

(b) *Records from Non-U.S. Government Source.* (1) Upon receipt of a request for a record that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, including a contract proposal or contract material, the Office will contact the source of the requested record or information requesting advice as to whether release of the record would adversely affect the source's competitive position or invade anyone's privacy. Subsequent to receipt of such advice, the Office will independently examine the requested document and will notify the requester of the final decision.

(2) OA personnel will generally consider two exemptions in the FOIA in deciding whether to withhold from disclosure material from a non-U.S. Government source. Exemption 4 permits withholding of "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Exemption 6 permits withholding certain information, the disclosure of which "would constitute a clearly unwarranted invasion of personal privacy." The source whose material has been requested will be asked to supply convincing justification for any material it wishes withheld under the Act, in accordance with the following general guidelines.

(i) For consideration under *exemption 4,* the supplier of the record or information should identify material that would be likely to cause substantial harm to its present or future competitive position if it were released. If a contractor, the provider should assume that the material will be released to a competitor, even if that is not always the case. A contractor must provide detailed information on why release would be harmful, e.g., the general custom or usage in the business; the number and situation of the persons who have access to the information; the type and degree of risk of financial injury that release would cause; and the length of time the information will need to be kept confidential.

(A) In this respect, the Office of Administration will—as a general rule—look favorably upon recommendations for withholding information about ideas, methods, and processes that are unique; about equipment, materials, or systems that are potentially patentable; or about a unique use of equipment which is specifically outlined.

(B) OA will not withhold information that is known through custom or usage in the relevant trade, business, or profession, or information that is generally known to any reasonably educated person. Self-evident statements or reviews of the general state of the art will not ordinarily be withheld.

(C) OA will withhold all cost data submitted except the total estimated cost for each year of the contract. It will release these total estimated costs and ordinarily release explanatory material and headings associated with the cost data, withholding only the figures themselves. If a contractor believes some of the explanatory material should be withheld, that material must be identified and a justification be presented as to why it should not be released.

(ii) *Exemption 6* is not a blanket exemption for all personal information. The Office will balance the need to keep a person's private affairs from unnecessary public scrutiny with protection of the public's right to information on Government records.

(A) As a general practice, the Office will release information about any person named in a contract itself or about any person who signed a contract as well as information given in a proposal about any officer of a corporation submitting that proposal. Except for names and other identifying details, the Office usually releases all information in resumes concerning employees, including education and experience. Efforts will be made to identify information that should be deleted and offerors are urged to point out such material for guidance. Any information in the proposal which might constitute an unwarranted invasion of personal privacy if released should be identified and a justification for non-release provided in order to receive proper consideration.

(B) The Office can protect the names of and identifying details about other staff members who are described in a contract proposal if it is clear that identification of these employees would assist competitors in raiding and hiring them away. In this regard, names and other identifying details could be protected under Exemption 4 (harmful to competitive position) and also under Exemption 6 (it would be an unwarranted invasion of personal privacy to release them). In such a case, the Office would withhold names, home addresses, salaries, telephone numbers, social security numbers, marital status and, if these served to identify them, perhaps some details about past employment or professional activities of these persons.

[45 FR 47112, July 14, 1980. Redesignated and amended at 49 FR 28234, July 11, 1984]

§ 2502.15 Exemptions.

(a) 5 U.S.C. 552 exempts from all of its publication and disclosure requirements nine categories of records which are described in 552(b). These categories include such matters as national defense and foreign policy information, investigatory files, internal procedures and communications, materials exempted from disclosure by other statutes, information given in confidence and matters involving personal privacy.

(b) Executive Order 12028 (December 4, 1977) provides that the Office of Administration shall upon request, assist the White House office in performing its role of providing those administrative services which are primarily in direct support of the President. Due to this role of providing direct support of the President, members of the public should presume that communications between the Director of the Office of Administration and the President (and their staffs) are confidential or ordinarily will not be released; they will usually fall, at a minimum, within Exemption 5 of the Act.

(c) The records of the Office of Administration which are part of systems of records subject to the Privacy Act of 1974 are exempt from disclosure to the public except as provided by 5 CFR Part 2504.

[45 FR 47112, July 14, 1980. Redesignated at 49 FR 28235, July 11, 1984]

§ 2502.16 Deletion of exempted information.

Where requested records contain matters which are exempted under 5 U.S.C. 552(b) but which matters are reasonably segregable from the remainder of the records, they shall be disclosed by the Office with deletions. To each such record, the Office shall attach a written justification for making deletions. A single such justification shall suffice for deletions made in a group of similar or related records.

[45 FR 47112, July 14, 1980. Redesignated at 49 FR 28235, July 11, 1984]

§ 2502.17 Annual report.

The General Counsel or his or her designee shall annually on or before March 1, submit a Freedom of Information report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate. The report shall include those matters required by 5 U.S.C. 552(d).

[45 FR 47112, July 14, 1980. Redesignated and amended at 49 FR 28235, July 11, 1984]

Subpart B—Production in Response to Subpoenas or Demands of Courts or Other Authorities

§ 2502.30 Purpose and scope.

This subpart contains the regulations of the Office concerning procedures to be followed when a subpoena, order or other demand (hereinafter in this subpart referred to as a "demand") of a court or other authority is issued for the production or disclosure of:

(a) Any material contained in the files of the Office of Administration;

(b) Any information relating to materials contained in the files of the Office; or

(c) Any information or material acquired by any person while such person as an employee of the Office of Administration as a part of the performance of his official duties or because of his official status.

§ 2502.31 Production prohibited unless approved by the Director.

No employee or former employee of the Office of Administration shall, in response to a demand of a court or other authority, produce any material contained in the files of the Office of Administration or disclose any information or produce any material acquired as part of the performance of his official status without the prior approval of the Director.

§ 2502.32 Procedure in the event of a demand for disclosure.

(a) Whenever a demand is made upon an employee or former employee of the Office of Administration for the production of material or the disclosure of information described in § 2502.31, he shall immediately notify the Director. If possible, the Director shall be notified before the employee or former employee concerned replies to or appears before the court or other authority.

(b) If response to the demand is required before instructions from the Director are received, an attorney designated for that purpose by the Office of Administration shall appear with the employee or former employee upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this part and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration by the Director. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested instructions from the Director.

§ 2502.33 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 2502.32(b) pending receipt of instructions from the Director, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the Director not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand. (United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951)).

PART 2504—PRIVACY ACT REGULATIONS

Sec.

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AUTHORITY: 5 U.S.C. 552a.

SOURCE: 45 FR 41121, June 18, 1980, unless otherwise noted.

§ 2504.1 Purpose and scope.

These regulations implement the Privacy Act of 1974, 5 U.S.C. 552a. The regulations apply to all records maintained by the Office of Administration that are contained in a system of records, and that contain information about an individual. The regulations also establish procedures that (a) authorize an individual's access to records maintained about him; (b) limit the access of other persons to those records, and (c) permit an individual to request the amendment or correction of records about him.

§ 2504.2 Definitions.

For the purposes of this part—(a) "Office" means the Office of Administration, Executive Office of the President;

(b) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) "Maintain" means collect, use or distribute;

(d) "Record" means any item collection or grouping of information about an individual that is maintained by the Office, including but not limited to education, financial transactions, medical history, and criminal or employment history and that contain's the individual's name, identifying number, symbol, or other identifiers assigned to the individual, such as a finger or voice print or photograph;

(e) "System of records" means a group of any records controlled by the Office and from which information is retrieved by the name of the individual;

(f) "System manager" means the employee of the Office who is responsible for the maintenance, collection, use or distribution of information contained in a system of records;

(g) "Routine use" means, with respect to the disclosure of a record, the use of that record for a purpose consistent with the purpose for which it was collected;

(h) "Subject individual" means the individual by whose name or other personal identifier a record is maintained or retrieved;

(i) "Statistical record" means record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of Title 13 U.S.C.;

(j) "Agency" means agency as defined in 5 U.S.C. 552(e);

(k) "Work days" as used in calculating the date when response is due does not include Saturdays, Sundays and legal public holidays.

§ 2504.3 Annual notice of systems of records maintained.

The Office will publish in the FEDERAL REGISTER upon establishment or revision a notice of the existence and character of the systems of records the Office maintains. The notices shall include (1) the system name, (2) the system location, (3) the categories of individuals covered by the system, (4) the categories of records in the system, (5) the Office's authority to maintain the system, (6) the routine uses of the system, (7) the Office's policies and practice for maintenance of the system, (8) the system manager, (9) the procedures for notification, access to and correction of records in the system, and (10) the sources of information for the system.

[45 FR 47112, July 14, 1980, as amended at 49 FR 28236, July 11, 1984]

§ 2504.4 Determining if an individual is the subject of a record.

(a) Individuals desiring to know if a specific system of records maintained by the Office contains a record pertaining to them should address inquiries to the Privacy Act Officer, Office of Administration, Washington, D.C. 20503.

(b) Inquiries must be in writing and the words "PRIVACY ACT REQUEST" should be printed on both the letter and the envelope. The request letter should contain the complete name and identifying number of the pertinent system as published in the annual FEDERAL REGISTER notice describing the Office's Systems of Records; the full name and address of the subject individual; a brief description of the nature, time, place and circumstances of the individual's prior association with the Office; and any other information the individual believes would help the Privacy Act Officer determine whether the information about the individual is included in the system of records. In instances when the information is insufficient to ensure disclosure to the subject individual to whom the record pertains, the Office reserves the right to ask the requestor for additional identifying information.

(c) To the extent possible, the Privacy Act Officer will answer or acknowledge the inquiry within 10 work days of its receipt by the Office. When the response cannot be made within 10 work days, the Privacy Act Officer will provide the requestor with the date when a response may be expected and, whenever possible, the specific reasons for the delay.

[45 FR 41121, June 18, 1980, as amended at 49 FR 28235, July 11, 1984]

§ 2504.5 Granting access to a record.

(a) An individual requesting access to a record about himself in a system of records maintained by the Office should submit the request in writing to the Privacy Act Officer. Due to security measures at the Old and New Executive Office Buildings, requests made in person can only be accepted from current Office employees, who should make access requests to the Privacy Act Officer on regularly scheduled work days between 9:00 a.m. and 5:30 p.m.

(b) The request for access should contain the same information set forth in § 2504.4(b). However, if the request for access follows a request made under § 2504.4(a) and (b) of this part, the same identifying information need not be included: *Provided*, That a copy of the prior request or a copy of the Office's response to that request is attached. The request should state if a copy of the record is desired.

[45 FR 41121, June 18, 1980, as amended at 49 FR 28235, July 11, 1984]

§ 2504.6 Special procedures for medical records.

(a) When the Privacy Act Officer receives a request from an individual for access to those official medical records which belong to the Office of Personnel Management and are described in Chapter 339, Federal Personnel Manual (medical records about entrance qualification or fitness for duty, or medical records which are otherwise filed in the Official Personnel Folder), the pertinent records shall be referred to a Federal Medical Officer for review and determination in accordance with this section. If no Federal Medical Officer is available to make the determination required by this section, the Privacy Act Officer shall refer the request and the medical reports concerned to the Office of Personnel Management for determination.

(b) If, in the opinion of a Federal Medical Officer, medical records requested by the subject individual indicate a condition about which a prudent physician would hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the Privacy Act Officer shall not release the medical information to the subject individual nor to any person other than a physician designated in writing by the subject individual, his guardian, or conservator.

(c) If, in the opinion of a Federal Medical Officer, the medical information does not indicate the presence of any condition which would cause a prudent physician to hesitate to inform a person suffering from such a condition of its exact nature and probably outcome, the Privacy Act Officer shall release it to the subject individual or to any person, firm, or organization which the individual authorizes in writing to receive it.

[45 FR 41121, June 18, 1980, as amended at 49 FR 28235, July 11, 1984]

§ 2504.7 Granting access when accompanied by another individual.

An individual who wishes to have a person of his choosing review, accompany him (or her) in reviewing, or obtain a copy of a record must, prior to the disclosure, sign a statement authorizing the disclosure of his record. The statement shall be maintained with the record.

§ 2504.8 Action on request.

(a) The Privacy Act Officer shall acknowledge requests for access within 10 work days of its receipt by the Office. At a minimum, the acknowledgement shall include:

(1) When and where the records will be available;

(2) The name, title and telephone number of the official who will make the records available;

(3) Whether access will be granted only through providing a copy of the record through the mail, or only by examination of the record in person if the Privacy Act Officer after consulting with the appropriate system man-

ager, has determined the requestor's access would not be unduly impeded;

(4) Fee, if any, charged for copies. (See § 2504.17); and

(5) Identification documentation required to verify the identify of the requestor (see § 2504.9).

[45 FR 41121, June 18, 1980, as amended at 49 FR 28235, July 11, 1984]

§ 2504.9 Identification requirements.

(a) A requestor should be prepared to identify himself (or herself) by signature, i.e., to note by signature the date of access and/or to produce two other legal forms of identification (driver's license, employee identification, annuitant card, passport, etc.).

(b) If an individual is unable to produce adequate identification, the individual shall sign a statement asserting identity and acknowledging that knowingly or willfully seeking or obtaining access to records about another person under false pretenses may result in a fine of up to $5,000 (see § 2504.18). In addition, depending upon the sensitivity of the records, the Privacy Act Officer after consulting with the appropriate system manager, may require further reasonable assurances, such as statements of other individuals who can attest to the identity of the requestor.

(c) If access is granted by mail, the identity of the requestor shall be verified by comparing signatures. If, in the opinion of the Privacy Act Officer, after consulting with the appropriate system manager, the granting of access through the mail may result in harm or embarrassment if disclosed to a person other than the subject individual, a notarized statement of identify or some other similar assurance of identity will be required.

[45 FR 41121, June 18, 1980, as amended at 49 FR 28235, July 11, 1984]

§ 2504.10 Access of others to records about an individual.

(a) No official or employee of the Office shall disclose any record to any person or to another agency without the express written consent of the subject individual, unless the disclosure is:

(1) To officers or employees of the Office who need the information to perform their official duties;

(2) Under the requirements of the Freedom of Information Act;

(3) For a routine use that has been published in a notice in the FEDERAL REGISTER;

(4) To the Bureau of the Census for uses under Title 13 of the United States Code;

(5) To a person or agency who has given the Office advance written notice of the purpose of the request and certification that the record will be used only for statistical purposes. (In addition to deleting personal identifying information from records released for statistical purposes, the Privacy Act Officer shall ensure that the identity of the individual cannot reasonably be deduced by combining various statistical records);

(6) To the National Archives of the United States if a record has sufficient historical or other value to be preserved by the United States Government, or to the Privacy Act Officer (or a designee) to determine whether the record has that value;

(7) In response to written request, that identifies the record and the purpose of the request, made by another agency or instrumentality of any Government jurisdiction within or under the control of the United States for civil or criminal law enforcement activity, if that activity is authorized by law;

(8) To a person who, showing compelling circumstances, needs the information to prevent harm to the health or safety of an individual, but not necessarily the individual to whom the record pertains (upon such disclosure, a notification shall be sent to the last known address of the subject individual);

(9) To either House of Congress, or to a Congressional committee or subcommittee if the subject matter is within its jurisdiction;

(10) To the Comptroller General, or an authorized representative, to carry out the duties of the General Accounting Office;

(11) Pursuant to a court order; or

(12) To a consumer reporting agency in accordance with section 3711(f) of Title 31.

[45 FR 41121, June 18, 1980, as amended at 49 FR 28235, July 11, 1984]

§ 2504.11 Access to the accounting of disclosures from records.

Rules governing access to the accounting of disclosures are the same as those granting access to the records.

§ 2504.12 Denials of access.

(a) The Privacy Act Officer may deny an individual access to his (or her) record if: (1) In the opinion of the Privacy Act Officer, the individual seeking access has not provided sufficient identification documentation to permit access; or

(2) The Office has published rules in the FEDERAL REGISTER exempting the pertinent system of records from the access requirement.

(b) If access is denied, the requestor shall be informed of the reasons for denial and the procedures to obtain a review of the denial (see § 2504.15).

[45 FR 41121, June 18, 1980, as amended at 49 FR 28235, July 11, 1984]

§ 2504.13 Requirements for requests to amend records.

(a) Individuals who desire to correct or amend a record pertaining to them should submit a written request to the Privacy Act Officer, Office of Administration, Washington, D.C., 20503. The words "PRIVACY ACT—REQUEST TO AMEND RECORD" should be written on the letter and the envelope.

(b) The request for amendment or correction of the record must state the exact name of the system of records as published in the FEDERAL REGISTER; a precise description of the record proposed for amendment; a brief statement describing the information the requestor believes to be inaccurate or incomplete, and why; and, the amendment or correction desired. If the request to amend the record is the result of the individual's having accessed the record in accordance with §§ 2504.5, 2504.6, 2504.7, 2504.8 of this part, copies of previous correspondence between the requestor and the Office should be attached, if possible.

(c) Individuals needing assistance in preparing a request to amend a record may contact the Privacy Act Officer at the address cited in § 2504.13(a) of this part.

(d) If the individual's identity has not been previously verified, the Office may require identification documentation as described in § 2504.9.

[45 FR 41121, June 18, 1980, as amended at 49 FR 28235, July 11, 1984]

§ 2504.14 Action on request to amend a record.

(a) A request for amendment of a record will be acknowledged within 10 work days of its receipt by the Office. If a decision cannot be made within this time, the requestor will be informed by mail of the reasons for the delay and the date when a reply can be expected, normally within 30 work days from receipt of the request.

(b) The final response will include the Office's determination of whether to grant or deny the request. If the request is denied, the response will include:

(1) The reasons for the decision;

(2) The name and address of the official to whom an appeal should be directed;

(3) The name and address of the official designated to assist the individual in preparing the appeal;

(4) A description of the appeal process within the Office; and

(5) A description of any other procedures which may be required of the individual in order to process the appeal.

§ 2504.15 Procedures for appeal of determination deny access to or amendment of records.

(a) Individuals who disagree with the refusal of the Office to grant them access to or to amend a record about them should submit a written request for review to the Privacy Act Officer, Office of Administration, Washington, D.C. 20503. The words "PRIVACY ACT—APPEAL" should be written on the letter and the envelope. Individuals desiring assistance preparing their appeal should contact the Privacy Act Officer.

(b) The appeal letter must be received by the Office within 30 calendar days from the date the requestor received the notice of denial. At a minimum, the appeal letter should identify:

(1) The records involved;

(2) The date of the initial request for access to or amendment of the record;

(3) The date of the Office denial of that request; and

(4) The reasons supporting the request for reversal of the Office's decision.

Copies of previous correspondence from the Office denying the request to access or amend the record should also be attached, if possible.

(c) The Office reserves the right to dispose of correspondence concerning the request to access or amend a record if no request for review of the Office's decision is received within 180 days of the decision date. Therefore, a request for review received after 180 days may, at the discretion of the Privacy Act Officer, be treated as an initial request to access or amend a record.

[45 FR 41121, June 18, 1980, as amended at 49 FR 28235, July 11, 1984]

§ 2504.16 Appeals process.

(a) Within 20 work days of receiving the request for review, a review group composed of the Privacy Act Officer, the General Counsel and the Official having operational control over the record, will propose a determination on the appeal for the Director's final decision. If a final determination cannot be made in 20 days, the requestor will be informed of the reasons for the delay and the date on which a final decision can be expected. Such extensions are unusal, and should not exceed an additional 30 work days.

(b) If the original request was for access and the initial determination is reversed, the procedures in § 2504.8 will be followed. If the initial determination is upheld, the requestor will be so informed and advised of the right to judicial review pursuant to 5 U.S.C. 552a(g).

(c) If the initial denial of a request to amend a record is reversed, the Office will correct the record as requested and advise the individual of the correction. If the original decision is upheld, the requestor will be so advised and informed in writing of the right to judicial review pursuant to 5 U.S.C. 552a(g). In addition, the requestor will be advised of his (or her) right to file a concise statement of disagreement with the Director. The statement of disagreement should include an explanation of why the requestor believes the record is inaccurate, irrelevant, untimely or incomplete. The Director shall maintain the statement of disagreement with the disputed record, and shall include a copy of the statement of disagreement in any disclosure of the record. Additionally, the Privacy Act Officer shall provide a copy of the statement of disagreement to any person or agency to whom the record has been disclosed, if the disclosure was made pursuant to § 2504.10 (5 U.S.C. 552(a)(c)).

[45 FR 41121, June 18, 1980, as amended at 49 FR 28235, July 11, 1984]

§ 2504.17 Fees.

(a) Individuals will not be charged for:

(1) The search and review of the record;

(2) Any copies produced to make the record available for access;

(3) Copies of the requested record if access can only be accomplished by providing a copy through the mail; and

(4) Copies of three (3) or less pages of a requested record.

(b) Records will be photocopied for 10¢ per page for four pages or more (except for paragraphs (a), (1), (2), (3), (4) of this section). If the record is larger than 8½×14 inches, the fee will be the cost of reproducing the record through Government or commerical sources.

(c) Fees shall be paid in full prior to issuance of requested copies. Payment shall be by personal check or money order payable to the Treasurer of the United States, and mailed or delivered to the Deputy Director, Office of Administration, Washington, D.C. 20503.

(d) The Deputy Director may waive the fee if: (1) The cost of collecting the fee exceeds the amount collected; or

(2) The production of the copies at no charge is in the best interest of the government.

(e) A receipt will be furnished on request.

[45 FR 41121, June 18, 1980, as amended at 49 FR 28235, July 11, 1984]

§ 2504.18 Penalties.

(a) Title 18, U.S.C. Section 1001, Crimes and Criminal Procedures, makes it a criminal offense, subject to a maximum fine of $10,000 or imprisonment for not more than five years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representation in any matter within the jurisdiction of any agency of the United States. Section (i) (3) of the Privacy Act (5 U.S.C. 552a) makes it a misdemeanor, subject to a maximum fine of $5,000 to knowingly and willfully request or obtain any record concerning an individual under false pretenses. Sections (i) (1) and (2) or 5 U.S.C. 552a provide penalties for violations by agency employees of the Privacy Act or regulations established thereunder.

Title 6—Economic Stabilization [Reserved]

Editorial Note: The Office of the Federal Register received a letter on December 24, 1981 from the Office of the General Counsel, Department of the Treasury which recommended that 6 CFR Part 602 not be republished. The letter explained that Part 602 was originally issued by Treasury to carry out the functions assigned to it by Executive Order 11788—Providing for the Orderly Termination of Economic Stabilization Activities. The letter further explained those functions "have been completed and that no Treasury personnel are assigned any active Economic Stabilization functions." Thus, the Treasury Department concluded that 6 CFR Part 602 was unnecessary and ought to be removed from the Code of Federal Regulations.

The Council on Wage and Price Stability was established by authority of Pub. L. 93-387, as amended (12 U.S.C. 1904 note). Regulations establishing Chapter VII were published at 40 FR 7233, February 19, 1975.

The wage and price regulatory program was terminated on February 2, 1981, by Executive Order 12288 of January 29, 1981 (46 FR 10135) and the Council on Wage and Price Stability was terminated as provided by Pub. L. 97-12 (95 Stat. 74) (46 FR 11229, Feb. 6, 1981).

Since the Council on Wage and Price Stability has been terminated and the functions of the Department of the Treasury pursuant to E.O. 11788 have been completed, the Director of the Office of the Federal Register, pursuant to 1 CFR 8.2 hereby removes from the Code of Federal Regulations Title 6, Chapter VI, Assistant Secretary for Administration, Department of the Treasury, consisting of Part 602, and Chapter VII, Council on Wage and Price Stability, consisting of Parts 701 through 704 inclusive.

Title 6, Code of Federal Regulations is hereby vacated.

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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Title 6, designated Economic Stabilization, was in existence until 1981. At 47 FR 2285, Jan. 15, 1982, Title 6 was vacated.

All sections in the former Title 6 of the Code of Federal Regulations which were affected by documents published in the FEDERAL REGISTER since January 1, 1973 are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972," published in three separate volumes.

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